CHAPTER 1 LEARNING LAW: HOW CAN I DEVELOP A LEGAL MIND?

Discussion questions—answers and commentary

Textbook pages 60-61

**1 There can often be an imbalance of power between parties to litigation. Do you think lawyers have greater ethical obligations where their client is more powerful than the opposing lawyers’ client? Why, or why not?**

The aim of this question is for students to think about graduate attributes such as social justice and ethics. It can be useful to bring in the rule of law and the way it applies equally to everyone, although that does not mean that everyone experiences it the same way. It can also be useful to draw out consideration of where they think an imbalance of power can arise – for example, between individual and large company. There is an imbalance of resources and expertise for legal action. Discuss the way some things will always be clearly acceptable (such as requiring the smaller party to prove its case) while others will be clearly unacceptable (such as threatening and blackmailing the smaller party), but there exists a grey area in between. That is a place they will have to operate in as lawyers, and exercise their own conscience in deciding what they will and will not do in pursuit of their client’s interests.

**2 The Constitution of Malaysia allows for a combination of secular law (civil and criminal law) and Islamic law, which applies only to Muslims. There is a Syariah Court (sharia) which has civil jurisdiction over matters such as marriage, and criminal jurisdiction with power to impose fines and prison sentences. What are some advantages and disadvantages of this approach?**

This question is useful for drawing out presumptions about law, and discussion is likely to be more fruitful in classes with students from diverse backgrounds. Broadly, here are some advantages and disadvantages students may find interesting to discuss:

Advantages:

1 It respects different views based on religious beliefs of what behavior is acceptable.

2 People may be more law abiding if they consider the laws to be grounded in their faith.

3 Religious leaders provide guidance on religious law, and where they are highly respected, their teachings will be more accepted than laws which are externally imposed.

4 There is scope to include consequences for breaches of moral requirements and not just strictly legal matters, and this accords with Islamic beliefs about social interactions having consequences (such as fasting, clothing, and relationships).

5 Many Muslim countries have a dual legal system, including in places such as Singapore, Indonesia, India, Lebanon, Nigeria, Kenya and Tanzania. In the UK a version is applied which could be equated to arbitration (tribunals can decide on marriage and divorce if the parties agree).

Disadvantages:

1 People should be equal in the eyes of the law, regardless of their religious belief. The rule of law should be that everyone is subject to the same law, not different laws for different people. (It can be useful at this stage to introduce students to the idea of conflict of laws, which they may learn more about when doing an elective)

2 There are also Hindus, Christians and Buddhists in Malaysia, why should they not also apply their own religious laws, where does it stop? (This can be linked to an introductory discussion of a ‘slippery slope’ argument for students).

3 Sharia law is contained in many sources including the Quran, hadiths and fatwas, and is open to interpretation to a greater extent than legislation, which undermines certainty in the law or means that even different Muslims in Malaysia have laws applied differently to them. (This is seen in Malaysia for example where Kelantan and Terengganu have a more conservative application of sharia than other parts of the country).

4 Some aspects of sharia law promote inequality, including for women and girls, which goes against human rights law and domestic implementation such as in anti-discrimination legislation.

5 People can convert from one religion to another at any time, and this may affect legal positions (see for example *Subashini Rajasingam vs Saravanan Thangathoray* (2007) where the couple were married in a Hindu ceremony, the husband converted from Hindu to Islam and took one of their children who he claimed had also converted, and the courts ruled the custody dispute would be determined under sharia not secular law, although the wife could not appear in the sharia court hearing.

**3 Why is lifelong learning important? Do you think it is becoming more, or less important? Why?**

For students who have come straight from school, all they know is learning because they have been in school for as long as they can remember. They may not have given any thought to what happens after university, and here is an opportunity. Do they think when they have their law degree that will be it? Or do they recognise already that law constantly changes and that we need to keep learning all through our career? For mature-age students who have returned to study, what did they do between their last degree and this one, to keep themselves up to date? Likely responses will range from reading the *Financial Review* and industry journals to surfing the internet. The aim is for students to think about why lifelong learning is important – to keep up to date, and to keep challenging oneself – and why it is becoming more important – because the pace of change has increased and so it is easier to become out of date. That is why they need to think of this as a beginning of a lifelong process, not just a four-year law degree.

**4 Think back to the exams and essays you have done in previous studies. What aspects have you found easy and difficult? Have you had trouble with running out of time in exams, or leaving too much of the work on an essay until the last minute? You can learn from these and avoid making the same mistakes in law school.**

Coming in the first chapter, this is an opportunity for self-reflection, to identify areas of strength and weakness from past experience. Lecturers can normalize the errors that are made such as preparation and time management, and share information about resources at the learning institution to support with study skills.