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Article

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The Experiences of Civil Lawyers When Studying the Common Law

Abstract: This article examines the issues experienced by civil lawyers when studying the common law. It considers the extent of the differences between common law and civil law legal systems, examines the challenges which students from civil law jurisdictions face when first exposed to the common law, analyses the various ways in which these challenges may be met, and summarises civilians' overall impressions of the common law.

Keywords: common law, civil law, experiences

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I. Introduction

Those of us raised in the common law tradition are well aware of the difficulties associated with its study. These include its piecemeal development, the occasionally inconsistent application of the rules of *stare decisis*, the way in which the *rationes decidendes* of cases are rarely articulated and can be extremely difficult – particularly in multi-judgment decisions – to identify, and the sometimes confusing circumstances in which precedents are distinguished rather than followed.

These difficulties notwithstanding, a person whose first (and perhaps only) experience of law is within the common law tradition is likely to accept the idiosyncrasies and inefficiencies of the system – if not without question, then at least without serious criticism. This is not necessarily surprising, given the common law's reputation for flexibility and fairness, and its firmly entrenched status as one of the world's most influential legal systems. A similar level of acceptance is not, however, to be found in those who come to the common law after having been educated in a civil law jurisdiction. Civil lawyers, already steeped in their own legal tradition, are less reticent about questioning the basis

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of the common law and more willing to point out what they perceive to be its weaknesses.[1] Given the increased movement of lawyers between jurisdictions, and, in particular, the number of students from civilian traditions who now choose to continue their legal studies in common law institutions, the approach of civil lawyers to the study of the common law is a matter of considerable significance. In identifying the specific problems experienced by those who come from a civil law background to learn the common law, we are better placed to find appropriate ways to reduce the level of frustration and bemusement which initial exposure to the common law invariably inspires.

This study is based on several years' experience introducing the common law to civil lawyers hailing primarily from Asia and, until recent years, Europe,[2] as part of the LL.M. programme offered by the Faculty of Law at the National University of Singapore (NUS). It combines the author's own observations with the views specifically canvassed from a representative sample of students[3] and with the results of a survey conducted of 57 students from Asian jurisdictions who took the course during the academic years 2010/2011, 2011/2012 and 2012/2013.[4]

1 The same is doubtless true of common lawyers' experience of the civil law, but this study focuses exclusively on the experiences of those from civilian backgrounds who pursue academic studies in the common law.

2 The author teaches a twelve-week course entitled "Common Law Reasoning and Writing" to students reading for various LL.M. courses at NUS (see Appendix I). The countries of origin of students taking this course have, in previous years, included Belgium, Cambodia, the Czech Republic, Finland, France, Germany, Indonesia, Italy, Japan, Kazakhstan, the People's Republic of China, Russia, Serbia, Spain, Switzerland, Taiwan, Thailand and Vietnam. In recent years, for the reasons outlined in Parts II and III.E below, the students required to take the course have come from Asian, rather than European, jurisdictions.

3 In this respect, the author wishes to extend particular thanks to Ariane Lise Michellod Berney (from Switzerland, several of whose views are quoted below) and Teresa Groβman (from Germany, who kindly allowed me to interview her, and whose views, while not specifically quoted, permeate this study), as well as Cai Weimin (from the People's Republic of China), Tatsuki Nakayama (from Japan) and Deborah Setyabudi (from Indonesia), all of whom willingly shared their experiences in adapting to the common law. All were students in the cohort reading for an LL.M. at NUS during the Academic Year 2009/2010, and Cai Weimin, Tatsuki Nakayama and Deborah Setyabudi took the Common Law Reasoning and Writing course. However, none of these students participated in the student survey (see Appendix II), which was conducted in the following three Academic Years (2010/2011, 2011/2012 and 2012/2013).

4 See Appendix II.

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II. Common law and civil law

The increasing level of inter-jurisdictional movement by civil lawyers and common lawyers in recent years has brought to the fore the debate about the essential differences between the world's two major legal systems. Some commentators consider the differences to be overstated, and they therefore regard as counterproductive – certainly from a comparative law perspective – any analysis which belabours what they perceive to be outdated distinctions. This view is certainly tenable when one looks, for example, at many of the civil lawyers studying and/or practising in Europe, who enjoy frequent exposure to the legal systems of their common law counterparts. For such lawyers, who are often fluent in English, movement between the two systems is relatively straightforward, and they do not find it particularly difficult to recognise a number of essential similarities. A similar ease of transition is not, however, necessarily experienced by civilians who hail from countries which offer very little exposure to the common law, as is the case in many Asian jurisdictions. For these lawyers, the key differences between the two systems can, initially, appear greater than they actually are – partly because of the dissimilar frameworks within which the systems operate, and partly because of linguistic and cultural factors which may exaggerate unfamiliar aspects of the common law.[5]

The fact that comparative law is now taught in so many forms in institutions throughout the world is evidence of our ever-widening interest in other legal systems. In the Faculty of Law at NUS, for example, we currently run a compulsory course to introduce second year LL.B. students to comparative legal traditions. Under proposals currently being considered, this course is likely to be reformulated to place specific emphasis on the legal systems of Asia. We also offer specialist elective courses for upper year LL.B. students and their LL.M. colleagues in a number of comparative law subjects,[6] and are likely in the near future to make it compulsory for our undergraduates to take at least one elective course from a cluster of courses dealing with various aspects of the civil law. Against this backdrop, it is the view of our Faculty that – while it would indeed be a mistake to overstate the differences between common law and civil law – it is both necessary and appropriate to offer a course on key features of the common

5 For further discussion of the differing experiences of European and Asian students, see Part III.E below, and for further discussion of the essential similarities between the common law and civil law systems, see Part V below.

6 These include Comparative and International Anti-Corruption Law, International and Comparative Law of Sale in Asia, Chinese Legal Tradition and Chinese, and Comparative State and Religion in Southeast Asia.

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law to those of our incoming LL.M. students whose experience has hitherto been confined to civil law systems.

III. The challenges facing civil lawyers when studying the common law

A. Language

The first, and most obvious, challenge facing students from civilian jurisdictions is language. By definition, very few students from civil law jurisdictions speak English as their mother tongue. And even though the English skills of civil lawyers vary from almost fluent to barely functional – which probably explains why, when surveyed, students expressed differing views about the extent to which studying in English made it more difficult to learn about the common law[7] – all those who seek to understand the common law recognise that language is the first barrier to knowledge.

Language difficulties are compounded by the sometimes abstruse and confusing terminology found in the common law culture (such as the description of non-criminal law as "civil" law, the fact that only statutes are described as "written law", and the substitution of "and" for "versus" in the names of the parties to common law civil actions). In addition, older authorities often make extensive use of Latin expressions, which can be particularly confusing for those who do not come from the European tradition. Older cases are also often expressed in terms so arcane that even a native English speaker could be forgiven for finding them impenetrable. And while more recent cases generally use clearer language, the endemic use of idioms and other expressions requiring explanation makes the task of comprehending judgments more complicated.

While the discussion in this study relates primarily to the specific difficulties which arise from the inherent differences between the common law and civil law systems, the obstacle posed by lack of conversance with English underlies all other issues. Problems in understanding the language make every task more difficult, more confusing and more time-consuming. And even though the constant and extensive use of English which results from studying for a degree in the language rapidly improves the proficiency of all students, for many an

7 See Appendix II, Section A.

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inability fully to comprehend its subtleties remains the fundamental barrier to a sophisticated understanding of the common law.

B. Adjusting to a System of Case-Based Law

Although it is something of an over-simplification to describe the common law system as one based entirely on the outcome of cases – especially in the modern era, when statutes are becoming increasingly prevalent, particularly in newly developing or technical areas of law – it is nevertheless true that the case-based nature of the system requires civilian students to make considerable adjustments in terms of both attitudes and study techniques. Even students with strong language ability and excellent legal skills can find it difficult initially to adjust to a system in which the majority of rules actually originate in cases rather than codes or statutes, and all comment on the differences between the civil law and the common law. In the words of one student:

> The approach to studying a new field of common law is completely different: as a student and lawyer from a civil law jurisdiction, I start by reading the relevant statute(s), then the doctrine...and eventually the most important cases. In common law, I had to learn to read the cases first in order to "build" my understanding of the topic. This kind of "empirical" approach to studying law made me feel quite insecure – and took me much more time to understand the subject than it would have done if I had to study the same subject in the civil law[.][8]

Civilian students are surprised to discover how long cases can be, containing as many as five (or, in rare but significant instances, seven or even nine) judgments, and often including a detailed and comprehensive discussion of the facts. Students observe, moreover, that reading cases in a "civil law" manner can result in an ineffective use of their time, since they tend to "get lost" in the minutiae, unable to distinguish the *ratio* of a case from its *obiter dicta* or to calculate how much weight to accord to the various judgments – particularly when even concurring judgments are often differently reasoned. Indeed, when surveyed, students ranked the fact that common law cases are long and often contain several judgments, and that the *ratio decidendi* of a case can be extremely difficult to identify, as the biggest problems in studying the common law.[9]

Students also comment on the arbitrariness of decisions in which apparently binding precedents are distinguished on the basis of minor and apparently

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8 Ariane Lise Michellod Berney.

9 See Appendix II, Section A.

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inconsequential dissimilarities – a phenomenon which in their eyes undermines the supposed supremacy of the rules of *stare decisis*:

> I experienced difficulty in understanding the *ratio decidendi* of cases, differentiating ratios from dicta, and deciding whether I should apply the ratio of a case only to an almost identical situation, or whether it could also be applied to different circumstances by extending the rule…Another problem I experienced was when I encountered contradictory decisions on similar issues involving similar facts. I found it difficult to resolve the decisions and to extract a rule or rules from them.[10]

The notion of reasoning from the particular facts of a case to a general rule applicable in new circumstances is, moreover, counter-intuitive to civilians, who are accustomed to starting with the broad general principle in a code or statute, and then applying it to specific circumstances.

C. Understanding the Nature and Role of Statutes in the Common Law

Having been introduced to the notion that the common law is founded on judicial decisions, civilian students then have to deal with the fact that statutes nevertheless play a major role in all common law jurisdictions. Civil lawyers are, of course, familiar with statutes which, together with universally applicable codes, form the basis of the civil law. They are also familiar with the interpretative nature of the judicial role when considering statutory words. However, it can take them a while to understand that, whereas civil law codes and statutes are usually broadly drafted to cover whole swathes of law under a general umbrella, statutes in common law jurisdictions vary from those which are also fairly general to those which – particularly in technical areas – contain a detailed exposition of the law. They also find it difficult to reconcile the fact that while judges play a pivotal role in developing the common law, their role when interpreting statutes is far more constrained, and that (in contrast to their civilian counterparts) they have very limited opportunity to move outside the statutory wording. This narrow – and indeed rigid – approach to statutory interpretation often strikes civilians as being somewhat inconsistent with the supposed fluidity of the common law system.

10 Deborah Setyabudi.

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D. Dealing with Unfamiliar Areas of Law

The problems referred to above relate to the common law in general, regardless of subject-matter, but some aspects of law create particular difficulties. For example, many civilians are unfamiliar with the requirement of consideration in the law of contract, which they consider to be both unnecessary and irrational. They dislike the absence of a general concept of good faith, and the lack of contextual interpretation. They also find it difficult to comprehend good faith as the purview of equity, which trumps the common law but applies only in limited situations where it is deemed that injustice would otherwise result. Perhaps most significantly – if only because it touches on so many other areas of law – the realm of trusts is unfamiliar to many civilian students. This makes it extremely difficult for them to understand any subject in which a trust may be involved, and potentially places them at a significant disadvantage in courses where, as is often the case, other members of the class are common lawyers.

E. Jurisdictional Differences in Approaching the Common Law

Students from Europe (particularly from the countries of continental Europe, such as France, Germany and Switzerland) tend to have broadly similar experiences when studying the common law for the first time, and generally agree that the way in which they have been taught to approach law in their own systems ultimately enables them to come to terms with the common law.[11] Moreover, most European students will, at one time or another, have been exposed to the common law through the United Kingdom's membership of the European Union. They therefore generally find it less mysterious than do their Asian counterparts, who on the whole experience greater difficulties in adapting to what is to them a genuinely alien system. As one student from Indonesia observes:

> All civil law students generally face the same issues, since the main difference between the civil law and the common law is that common law is based on cases and civil law is based on codes. However, I think that there is a jurisdictional difference, because I came to realize that some civil law jurisdictions – particularly European ones – have adopted more concepts from common law systems (and vice versa). Therefore, in my opinion, the students coming from those jurisdictions have a better understanding of common law concepts.[12]

In addition, Asian students tend to take a less unified approach to the common law, and students from one Asian jurisdiction not uncommonly find themselves

11 For further discussion of this point, see Parts IV.B and D below.

12 Deborah Setyabudi.

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on a different legal wavelength from those from another jurisdiction. While there is no empirical evidence specifically supporting the reasons for this, two possible explanations merit consideration. The first is that, notwithstanding the European origins of the civil codes in most Asian countries, political and social development within Asia has led to a greater degree of cultural and pedagogical divergence. The second is that, whereas most European students enjoy similar levels of competence in English (usually falling within the upper ability range), the variation in English skills among Asian students is far more marked. While some are close to fluent, others experience real difficulties in coming to terms with the language. For these students the study of the common law is a far greater challenge.

A final point on jurisdictional differences relates to the use and citation of materials. While, to an extent, all jurisdictions recognise the need to acknowledge another's work or ideas, the degree to which – and the circumstances in which – this must be done vary greatly, as do the form which any acknowledgment must take and the consequences of failure to make such an acknowledgment. Students from jurisdictions which take a less severe approach to what is regarded in the West as serious plagiarism (and these tend again on the whole to be primarily Asian jurisdictions) are often initially quite shocked by the requirements for citing and acknowledging sources in their written work. They are also extremely concerned about the severity of the potential consequences should they unwittingly fail to meet these requirements.

IV. Dealing with the Challenges

A. Developing English Skills

The first – and arguably the most significant – way to assist civilian students in coping with the common law is thus to help them to develop their English skills as quickly and efficiently as possible. While different institutions require varying levels of proficiency in standardised tests such as TOEFL[13] or IELTS,[14] all apply a

13 Test of English as a Foreign Language, which evaluates the ability of an individual to use and understand English in an academic setting. It is administered worldwide by the Educational Testing Service.

14 International English Language Testing System, the academic version of which assesses the skills of individuals wishing to enrol in universities and other institutions of higher education. It is jointly administered by University of Cambridge ESOL Examinations, the British Council and IDP Education Pty Ltd.

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cut-off point below which they will not entertain applications, and a number of institutions insist that successful applicants whose marks fall just above that cut-off point take intensive English courses before their law studies commence. Some institutions are able to offer in-house courses; others may require students to attend approved courses elsewhere. However, while any instruction to improve English skills is better than none, practical and financial constraints often mean that such courses last only a few weeks, and that they generally contain little, if any, exposure to English in a legal context.[15] As a result, many students commence their studies in the common law unable to understand even the most basic aspects of decisions – particularly those which contain multiple judgments or nuanced articulations of legal rules. It is therefore essential at the beginning of their common law studies to familiarise students from civil law jurisdictions not only with the law, but also with the language in which the law is expressed. Since substantive law courses – which are frequently taught to a wide variety of students, for many of whom English is the first language – have neither the time nor the resources to offer additional practice in this respect, the secondary role of helping to improve civilians develop greater proficiency in English tends to fall on special courses designed to introduce them to the common law.

Although the ideal would be to have such special courses conducted by instructors with specific training in teaching English as a foreign language, and to complete the courses before the students start to study their substantive law subjects, neither of these things actually tends to happen. In practice, almost all instructors are trained exclusively as lawyers, and they see their predominant aim as being to impart legal, rather than linguistic, skills. Moreover, the logistical problems inherent in scheduling an intensive course to be completed before the students commence their legal studies generally result in courses designed to introduce students to the common law being run in tandem with substantive law subjects.

It is helpful for early practical exercises in common law courses to include in-class analysis of judgments, since this assists students to understand how judges reason and also helps them learn how to extract the *rationes decidendi* and *obiter dicta* from cases. In addition, it is advisable to set aside time for oral presentations on relevant topics, thus offering students the opportunity to practise their speaking skills in a sympathetic environment. Although many of the students surveyed ranked in-class presentations

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15 It is, however, possible to design courses which develop English skills through the use of legal materials. One such course was very successfully initiated by Dr. Maria Luisa Sadorra of the Centre for English Language Communication at the National University of Singapore.

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as among the least helpful learning tools,[16] and comparatively few favoured an increase in the use of compulsory class participation,[17] it is hard to avoid the conclusion that this was due more to the potential for embarrassment than to a genuinely held view that there was no value in the testing of oral skills. Indeed, from a pedagogical perspective, oral presentations can be extremely helpful in developing confidence, although, due to the individual and cultural sensitivities involved, they have to be used sparingly and with flexibility.

The most demanding exercises in terms of time and effort for all concerned are writing assignments, designed to provide as many opportunities as possible to improve students' communication skills in written English. Such assignments often start as simple case summaries or explanations of basic rules and move on to more complex hypothetical legal problems requiring research, application, analysis and conclusions in relation to difficult fact-patterns. They also involve practice in essay-writing and the answering of questions under timed conditions, the latter particularly designed to assist in the students' preparation for formal examinations – a subject which will be discussed further below.[18]

Over half of the students surveyed considered the requirement to complete frequent take-home writing assignments to be one of the most helpful tools in acquiring common law skills, although just under half considered in-class assignments to be among the least helpful.[19] The latter response was somewhat surprising, given the number of students who, in informal discussion, indicated that they considered the use of in-class assignments to offer valuable preparation for examinations. It may be that, as with the response to compulsory class participation, the result in this respect has more to do with the discomfort associated with the task than with its inherent lack of value. More than half considered it would be helpful to introduce more research-based assignments.[20] Feedback indicated that this was because many of the students valued the opportunity to enhance their common law research skills to assist them in undertaking projects in their substantive law subjects.[21]

16 See Appendix II, Section B.
17 See Appendix II, Section C.
18 See *infra* n. 27 and accompanying text.
19 See Appendix II, Section C.
20 *Ibid*.
21 See too *infra* n. 26 and accompanying text.

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B. Providing Differentiated Courses to Take Account of Students' Jurisdictional Origins

As has been observed above, while all civilians experience the same basic difficulties in familiarising themselves with the common law, not all require the same level of assistance to overcome these difficulties. Broadly speaking, general exposure to the common law in their countries of origin results in students from Europe being able to adjust relatively easily to the common law philosophy, and it is often sufficient for such students to take courses which concentrate on the areas of law with which they are least familiar but to which they will most frequently be exposed – such as consideration in contract law – or on areas of law which are completely new to them and which are likely to be at least peripherally relevant to their studies – such as equity and trusts.

However, for those who have had less prior exposure to the common law (and this usually means students from Asian jurisdictions), it is advisable to offer more comprehensive courses to provide a thorough examination of the workings of the common law. These courses may offer in-depth analysis of matters such as the rules of *stare decisis*, the process of common law reasoning, and the role of statutes in common law jurisdictions. The common law reasoning process, in particular, can be conveyed by reference to a chosen area in order to explain how the system works while also teaching representative aspects of substantive law.

The degree to which the problems associated with understanding the rules of *stare decisis* and the workings of judge-made law can be addressed by appropriately structured teaching is illustrated by the fact that, when surveyed, few students considered these to be among the more difficult aspects of studying the common law.[22]

C. Using Secondary Materials

While there is no substitute for reading and re-reading key cases, civilian students – like their common law counterparts – soon realise that one of the most efficient ways to come to grips with the common law is through the use of secondary materials. When faced with myriad cases on a particular point of substantive law, their first port of call is often relevant textbooks, which highlight the rules in the leading cases and summarise the overall law in the area. Casebooks, too, can be very useful in providing extracts from key judgments and

22 See Appendix II, Sections A and B.

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identifying lacunae or inconsistencies in the law. And carefully chosen articles and commentaries can also help students to understand particular aspects of difficult points of law.

In addition, books aimed primarily at introducing common law students in their first year of study to the law and the legal system can also be valuable to civil lawyers who, although already conversant with the law in their own jurisdictions, know little if anything about the common law. Such works often use major developments in particular areas of law to trace the way in which common law rules are formed. They also explain, and provide examples of, the system of *stare decisis* and the doctrine of binding precedent, examining the self-imposed nature of the system, its strengths and weaknesses, and the problems which arise when judges seek either to find a way around the rules of *stare decisis* or to flout them outright. In addition, these books discuss the role of statutes in common law jurisdictions, give examples of problems of statutory interpretation, and consider the precedential value of cases in which statutory provisions are interpreted. The straightforward and accessible manner in which such introductory works are written makes them ideally suited to civilians studying the common law for the first time.

Encouraging students in the use of secondary materials also offers an excellent opportunity for explaining to them the rules on the use and acknowledgment of such materials (as well, of course, as the rules on the use and citation of primary materials) in any written work or presentations. Since this is an aspect of studying the common law which can give rise to particular confusion and anxiety on the part of students from jurisdictions where the rules on such matters are more relaxed, it is also advisable to provide them with a detailed explanation of the plagiarism code of conduct in the relevant institution, and to ask them to sign a form acknowledging and accepting its terms.

D. Adapting Knowledge and Developing New Skills

Civilians do not, of course, approach the study of the common law in a vacuum. As trained lawyers, with academic (and frequently also professional) qualifications from their own jurisdictions, they come to the common law with both background knowledge and established skills – resources on which they are able to draw when encountering problems. A Swiss student concludes that:

> My general impression is that the method of analysis taught to civil law students from continental Europe helps a lot in reasoning in the common law…[and] I think that my prior legal knowledge in civil law – in particular in constitutional law, contract law and private

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> international law – helped me to overcome the difficulties met in common law: I could start from what I already knew in civil law when reading the cases…and I often made comparisons (when it was possible to do so, which was not always the case, as shown, for example, with the concept of consideration) in order to understand the common law approach.[23]

And while, as has been observed above, Asian students often find it more difficult to come to terms with the common law, they, too, draw on similar provisions in their own jurisdictions to assist them in understanding common law rules:

> When I am studying a new subject, the first thing I usually do is to compare it with the civil law – ie, the laws in my jurisdiction – to find out whether there is any similarity. For instance, after briefly learning about security, I know that the concept of "pledge" is similar in both common law and civil law, and the concept of assignment in common law is similar to assignment by way of *cessie* in civil law.[24]

Thus, even students facing the greatest hurdles of comprehension are usually able to relate their common law studies back to an equivalent civil law principle. That being said, there is a limit to the usefulness of drawing analogies, since:

> even when concepts are similar, there are still often significant differences – and thus the comparison method is useful only initially in helping one to understand the basic concept.[25]

It is therefore essential to assist students in developing existing skills and acquiring new ones. In the area of research,[26] for example, while civilian students have a level of competence in their own systems, the sheer volume of cases which may be applicable in a common law dispute – and the variety of jurisdictions from which persuasive authorities may originate – can make the task of finding relevant material initially daunting. This potential difficulty can be addressed by familiarising students as early as possible with the library and the available research tools in the relevant institution, and by following this up with research-oriented assignments and a generally supportive research environment. The ability to carry out effective research is, moreover, becoming increasingly essential, given that most institutions now routinely assess at least part of each substantive law course on the basis of a research component.

Similarly, while all civilian students have experience in taking legal examinations, many are unfamiliar with relatively short examinations (of, say, two to three hours) which require detailed and comprehensive answers on a number of issues. As one student from the People's Republic of China points out:

23 Ariane Lise Michellod Berney.
24 Deborah Setyabudi.
25 Deborah Setyabudi.
26 See too *supra* n. 21 and accompanying text.

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> [I]n my jurisdiction, generally the final exam contains a choice of questions requiring short answers. I do not have to write long answers to questions in two hours … in common law systems it is different, as the final exam requires students to write detailed answers. For me, this is too difficult. In my opinion, some of the questions are more suitable for research papers.[27]

The stress associated with taking examinations in an alien format and a foreign language can, however, be alleviated by offering students as much practice as possible in answering, under timed conditions, the kinds of questions they are likely to face in their substantive law subjects. Indeed, the more timed assignments which can be given the better, since the ability to think and write under pressure is one of the most valuable for any law student, and particularly one for whom English is a foreign tongue.

V. Civilian students' overall impressions of the common law

Although no two students will respond identically when asked about their experience in studying the common law, the following view encapsulates the overall impression of most civilian students:

> [T]he common law system is still a mystery to me: the complexity of the reasoning involved in comparing the facts of existing cases to the facts of the case at hand appears to me to be a very heavy task for the common law judge. And for students…the common law is like a puzzle: you need to assemble its different pieces (i.e., the relevant cases) in order to have a panoramic view of the topic, which is not easy to achieve…To me it is so much "easier" to solve a specific case by looking at a statute (and, if need be, at the doctrine and the jurisprudence for further clarification), rather than examining this "sea" of precedents, which, moreover, seem sometimes to contradict themselves.[28]

While a number may – at least in theory – be attracted to certain aspects of the common law, its complexities and anomalies tend ultimately to detract from its appeal:

> At first glance, the way of reasoning in the common law was impressive and seemed desirable. As a practitioner with about four years' experience in Japan, I already knew how important facts are in dealing with each case. When a case cannot be judged by simply applying statutes, contrasting the facts in the present case with those in precedents is

27 Cai Weimin.

28 Ariane Lise Michellod Berney.

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> vitally important, even in the civil law...However, the interpretation of cases in the common law seemed sometimes confusing and inconsistent, which made the common law rather unattractive to me.[29]

That being said, even those who consider the common law to be generally inferior to the civil law recognise that it has certain advantages, the most significant of which are its inherent flexibility and the fact that the judicial function is performed by senior – and usually very able – legal practitioners, rather than by specifically trained judges:

> I think common law judges have a greater ability to serve justice – by deciding cases between particular parties and on particular facts rather than by reference to general codes and statutes. In particular I am very impressed with the quality of judges in common law jurisdictions. They are experienced lawyers, whose decisions are well-reasoned and based on a strong understanding of the law.[30]

And it is certainly true that, even after a relatively brief period of study, most civilian students recognise the essential similarities between the common law and the civil law. These similarities lead them to the conclusion that many of the apparent differences between the two systems are, if not illusory, then at least largely skin-deep. For example, notwithstanding the fact that the civil law does not operate a formal system of *stare decisis*, in practice judges generally *do* follow previous decisions, particularly those of higher courts; and, conversely, although the common law is founded on judicial decisions, many aspects of law in common law jurisdictions are nowadays governed entirely by statutes, in the interpretation of which the role of common law judges resembles that of their civilian counterparts. Moreover, there are many individual areas in which the law has developed in a very similar fashion throughout all jurisdictions, regardless of their origins. Thus, while differences of style and philosophy between the two major legal systems of the world undoubtedly remain, students ultimately concede that the common law and the civil law converge almost as frequently as they diverge.

VI. Conclusion

The rapidity with which the inter-jurisdictional movement of lawyers has grown in recent decades has created significant opportunities for the exchange of ideas

29 Tatsuki Nakayama.
30 Deborah Setyabudi.

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and the development of a more global approach to the law. It has, however, brought with it the challenge of familiarising common lawyers with the civil law and civil lawyers with the common law – not an easy task given the fact that most lawyers regard with some suspicion any legal system other than the one in which they were trained. While those who are thrown straight into practice must largely learn on their feet, those who choose to embark on a course of study may be eased more gently into the peculiarities of an alien system. When introducing civilian students to the common law at university level, there are, as this study has sought to demonstrate, a number of ways to alleviate the difficulties inherent in coming to terms with the unfamiliar legal culture. Through effective use of pedagogical techniques, carefully chosen materials and appropriate assignments, many of the problems associated with understanding the common law may be minimised – and although it might be too much to hope that civilians will come to love the common law, they can at least be encouraged to appreciate its positive features. Ultimately, however, only complete immersion in the system and total fluency in English can finish the job which any instructor starts, and for some, therefore, a perfect understanding of the common law will remain an elusive goal.

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Appendix I – Outline of the Common Law Reasoning and Writing Course for Civilian LL.M. Students in the Faculty of Law, NUS

The Common Law Reasoning and Writing course in the Faculty of Law, NUS, is taught over twelve weeks between August and November each academic year. It is a compulsory course for students from civil law backgrounds who have previously had little or no exposure to the common law. Civilian students who are deemed to be sufficiently competent in dealing with the common law are exempted from taking the course. The degree of competence is gauged through an exemption test which requires students to answer a hypothetical question on a broad issue of common law. In recent years – including all those covered by the survey (see Appendix II) – the exemption test has resulted in only students from Asian jurisdictions being required to take the course. The number of students taking the course each year varies, but is usually in the low 20s.

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The course comprises two seminars per week, each lasting two and a half hours. It begins with a brief discussion of the differences between common law and civil law systems – focusing in particular on the role of statutes and case law in common law jurisdictions – and a presentation on the law library and its resources. The students are then introduced to reading cases and making case summaries, following which they examine the rules of *stare decisis*. There are subsequently several sessions analysing the way in which the common law develops. The course concludes with an examination of how to read and interpret statutes in common law systems.

While the various areas are being covered, the students are occasionally required to make in-class presentations within sub-groups of between four and five students per group. The presentations are generally fairly informal, although each student is required to make an individual contribution. One or two sessions are conducted in a more formal manner, with each sub-group making a presentation about an area of law of the group's choice. The class participation mark awarded at the end of the course counts for 20% of the final mark.

The students are also required to complete five formal writing assignments, as well as more informal timed writing assignments which take place during the last half hour of each class (i.e., twice weekly). The five formal writing assignments comprise two initial practice pieces – a take-home case summary and a timed one and a half hour take-home essay on *stare decisis* – as well as three pieces which count towards the final mark in the course. These are a 1,000 word take-home legal opinion on a common law issue for which the students are provided with the relevant materials (20% of the final mark), a 2,500 word take-home office memorandum involving two discrete issues for which the students are required to conduct their own research (30% of the final mark), and a timed two and a half hour in-class essay on a question relating to material covered in the course (also 30% of the final mark).

In addition, the students are required to attend two training sessions on the use of digital research resources, one which is jurisdictionally specific and one which is not.

Although minor adjustments were made to the course during the period surveyed, the fundamental content remained the same throughout.

Appendix II – Student survey

This survey was completed by 57 students from Asian civil law jurisdictions who took the Common Law Reasoning and Writing course during the Academic Years 2010/2011, 2011/2012 and 2012/2013.

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Section A: Rank in order of significance from 1 to 5 the problems you encountered in studying the common law (where 1 was the biggest problem and 5 was the smallest problem)

	1	2	3	4	5
You had to study the common law in English	23% (13)	14% (8) Total 1 + 2: 37%	25% (14)	16% (9)	23% (13) Total 4 + 5: 39%
Common law is based on decisions of judges rather than on codes or statutes	14% (8)	7% (4) Total 1 + 2: 21%	30% (17)	33% (19)	16% (9) Total 4 + 5: 49%
Common law cases are often long, and frequently contain several judgments	33% (19)	42% (24) Total 1 + 2: 75%	12% (7)	11% (6)	2% (1) Total 4 + 5: 13%
Common law cases do not usually make the *ratio decidendi* completely clear	28% (16)	32% (18) Total 1 + 2: 60%	19% (11)	19% (11)	2% (1) Total 4 + 5: 21%
Judges in common law jurisdictions are bound by the rules of *stare decisis*	2% (1)	4% (2) Total 1 + 2: 6%	16% (9)	23% (13)	56% (32) Total 4 + 5: 79%

The most significant problems in studying the common law – based on a ranking of 1 or 2

75% of responses ranked the fact that common law cases are long and contain several judgments as the biggest or second biggest problem and 60% of responses ranked the fact that common law cases do not usually make the *ratio decidendi* completely clear as the biggest or second biggest problem

The least significant problems in studying the common law – based on a ranking of 4 or 5

79% of responses ranked the fact that judges are bound by the rules of *stare decisis* as the smallest or second smallest problem

Assessment of responses

Section A elicited a high level of common responses at the top and bottom ends, with a significant percentage of students agreeing on the most, and least, significant problems in studying the common law

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Section B: Rank in order of significance from 1 to 5 the things about the course which *helped* you to understand the common law (where 1 was the thing which helped you most and 5 was the thing which helped you least)

	1	2	3	4	5
Studying cases and statutes to see how the common law works	42% (24)	28% (16) Total 1 + 2: 70%	14% (8)	12% (7)	4% (2) Total 4 + 5: 16%
Studying cases on the rules of *stare decisis* to see how the rules work and what the courts do when they are broken	23% (13)	23% (13) Total 1 + 2: 46%	26% (15)	23% (13)	5% (3) Total 4 + 5: 28%
Being required to do frequent take-home writing assignments	21% (12)	33% (19) Total 1 + 2: 54%	23% (13)	19% (11)	4% (2) Total 4 + 5: 23%
Being required to do in-class presentations	5% (3)	2% (1) Total 1 + 2: 7%	4% (2)	16% (9)	74% (42) Total 4 + 5: 90%
Being required to do in-class writing assignments	9% (5)	14% (8) Total 1 + 2: 23%	33% (19)	30% (17)	14% (8) Total 4 + 5: 44%

The most helpful things about the course – based on a ranking of 1 or 2

70% of responses ranked studying cases and statutes to see how the common law works as the biggest or second biggest help

The least helpful things about the course – based on a ranking of 4 or 5

90% of responses ranked being required to do in-class presentations as the least or second least help

Assessment of responses

Section B also elicited a high level of common responses at the top and bottom ends, with a significant percentage of students agreeing on the most, and least, helpful aspects of the course

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Section C: Rank in order of significance from 1 to 5 the things which you would like to be different about the course (where 1 is the thing you would most like to be different and 5 is the thing you would least like to be different)

	1	2	3	4	5
More writing assignments	12% (7)	26% (15) Total 1 + 2: 38%	28% (16)	11% (6)	23% (13) Total 4 + 5: 34%
More compulsory class participation	16% (9)	12% (7) Total 1 + 2: 28%	11% (6)	30% (17)	32% (18) Total 4 + 5:62%
More research-based assignments	28% (16)	35% (20) Total 1 + 2: 63%	16% (9)	18% (10)	4% (2) Total 4 + 5: 22%
More individual feedback sessions	25% (14)	18% (10) Total 1 + 2: 43%	19% (11)	25% (14)	14% (8) Total 4 + 5: 39%
More classes on the general background to and history of the common law	19% (11)	9% (5) Total 1 + 2: 28%	26% (15)	16% (9)	30% (17) Total 4 + 5: 46%

The things which should be most different about the course – based on a ranking of 1 or 2

63% of responses ranked being required to do more research-based assignments as the thing which should be most or second most different

The things which should be least different about the course – based on a ranking of 4 or 5

62% of responses ranked being required to do more compulsory class participation as the thing which should be least or second least different

Assessment of responses

Section C elicited the greatest range of responses from the students, with no overwhelming preferences for changes to any particular aspect of the course

Note: Percentages rounded up or down to nearest decimal point

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