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A Reflection on Practical Training in Legal Education in South Korea

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Abstract
The emphasis on practical training in legal education has come to the fore in many countries. It is little different in South Korea, where curricula for legal education now include a range of courses categorized as "practical training." The author questions whether the subjects taught under the title "practical training" effectively prepare students for practice in the real world. Education in legal theory and practical training are connected, which makes the categorization of courses specifically aimed at practical training inappropriate. More emphasis should be given to instilling practice awareness throughout all of legal education. It is argued that, in order to develop professional skills, incorporating practice awareness throughout the entire legal education curricula is important—that is, not limiting such skills to practical training courses, but integrating them throughout the teaching of legal theory.

Keywords: practical training, practical skill, legal competencies, legal education, practice awareness, legal theory education

1. THE DRIVE FOR "PRACTICAL TRAINING"

Since 2000, developments worldwide in relation to legal education have focused on emphasizing and/or re-establishing the importance of practical training.[1] As a result, the practical component of legal education in the UK, US, Germany, and Japan have all been scrutinized. A report issued by the Carnegie Foundation for the Advancement of Teaching in 2007 castigates American legal education for paying relatively little attention to direct training of professional practices in the US.[2] In 2007, the German Lawyers' Association proposed a reform of legal education for practical lawyer training.[3] The historic model of legal education in Japan, which used to follow the German model, was overturned in 2004, to introduce the professional law school in between the model of principal university study and practical training.

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1. Maxeiner (2009), pp. 37–9.
2. Sullivan (2007), p. 188.
3. *Ibid.*

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Circumstances are not that different in South Korea. In 2009, South Korea revamped its legal education system to introduce three-year law-school education as a graduate programme, replacing legal education as an undergraduate degree. Subsequently, only law-school graduates are given the opportunity to take the bar exam.

The reason for introducing the graduate-programme model was to teach and research the legal theory and practices necessary for training legal professionals.[4] The desire was that such extensive reforms would bring both qualitative and quantitative improvements to legal services in South Korea.[5]

One can assume several reasons for which practical training has gained so much attention. Consumers of legal services were demanding more from their lawyers, while junior lawyers were exhibiting fewer practical skills since the transition from legal apprenticeships to legal education in universities. Furthermore, the divide between reality and theory was becoming wider, as legal theory became more conceptual and abstruse.

At present, Korean law schools are required to include practical training courses, such as legal ethics, research, drafting, mock trials and internships, in their curricula,[6] and at least 20% of the teaching staff must have practical experience.[7] In addition to these legal requirements, the majority of law schools also teach subjects that used to be included in the Judicial Research and Training Institute (JRTI)[8] curricula, such as "civil procedure practice," "criminal procedure practice," "civil advocacy practice," "criminal advocacy practice," "prosecution practice" and "police practice."[9] The bar exam itself is divided into three sections—the third being "record based," where the examinee is required to answer the question by reviewing various documents and case records provided.

However, I question how and the extent to which practical skills courses and practice-oriented examinations in fact help to train lawyers who are professionally skilled at graduation. Practical legal expertise requires a precise understanding of complex legal principles and theories, combined with the ability to apply such knowledge to individual facts and reach a conclusion. Proficiency in practice cannot be sufficiently developed through the study of practical skills courses alone.

While it is widely accepted that more weight should be given to practical training in legal education, there seems to be little discussion or a clear understanding—in not only South

4. Art. 4, Act on the Establishment and Management of Professional Law Schools.

5. Han (2008), pp. 79–82.

6. Subpara. 1, Art. 13, Enforcement Decree of the Act on the Establishment and Management of Professional Law Schools.

7. Before professional law-school education was introduced in South Korea, professors at law faculties were mostly legal academics without any prior experience in legal practice.

8. The Judicial Research and Training Institute was first established in 1970 as a governmental organization under the Supreme Court, responsible for training persons who had passed the bar exam. In the beginning, since trainees were mostly nominated as judges or prosecutors, the curriculum focused on providing training necessary to serve as a judge or prosecutor. Although the proportion of trainees who have become judges or prosecutors has dropped to less than 20% since the 1990s, by and large, the institute continues to maintain its curricula.

9. A similar trend is evident in Japan. Subjects taught by judges, prosecutors, and practising lawyers are called "practical courses." Among these are compulsory courses, such as "foundations for civil practice" and "foundations for criminal practice." "Foundations for civil practice" is a course where students practice systematically applying the requirements of legal principles commonly used in civil cases, and "Foundations for criminal practice" is a course where students learn about the criminal procedure from the perspective of the prosecutor, practising lawyer, and judge. Other than such compulsory courses, practical courses also include "operative facts in civil practice" and "mock criminal trials."

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Korea, but also other parts of the world—on what exactly is meant by "practical training" and what the final goal of practical training consists of.

Different countries certainly have different views regarding practical training and how it should be carried out. These differences stem from not only differences in legal systems, but also the ways in which legal professionals have been trained. In countries where legal professionals were traditionally trained by way of apprenticeships, it was widely accepted that the process of becoming a lawyer included an apprenticeship of some sort, in addition to legal education in the classroom.[10] In countries where legal professionals were not traditionally trained by way of apprenticeships, practical training tends to take place in the classroom rather than workplaces such as law firms.[11]

Furthermore, in common-law countries, where legal principles are derived from individual cases, legal principles are inextricably linked to facts. The study of legal principles cannot, therefore, be considered apart from the facts of cases. However, in civil-law countries, legal principles are manufactured concepts disassociated from the facts of particular cases. As such, the study of law does not necessarily involve an understanding and interpretation of concrete facts. These differences influence how different countries perceive legal education and practical training. While common-law countries tend to focus on developing and improving legal writing and interviewing skills, civil-law countries tend to focus on practising applying laws to cases.

For the purposes of this article, I will define practical training as the teaching of the skills necessary to solve actual legal problems. This definition sets practical training apart from the study of legal theory, where facts are not themselves considered in teaching legal principles and doctrines. The general practice in legal education is to teach practical skills and legal theory separately for every subject. While some subjects tend to require more focus on legal theory than practical skill or vice versa, depending on the nature of the subject, so long as this is the approach taken, measures to improve practical skills would be limited to increasing the number of courses in practical training or making certain practical training courses compulsory for graduation.

I propose an alternative to this conventional view where subjects are neatly divided between education in legal theory and practical training. I propose improvement in practical training through a more unitary approach, whereby it is accepted that elements of legal theory education and practical training exist in conjunction with each other in every legal subject.

2. THE PROFESSIONAL SKILLS[12] OF LAWYERS

2.1 Elements of Legal Skills

To design effective programmes to develop the professional skills of lawyers, first identifying such skills is necessary. An oft-cited American report on legal education, the "MacCrate Report," lists ten "Fundamental Lawyering Skills" for future American lawyers. In abbreviated

10. For example, the training contract in the UK or junior associates in the US.

11. For example, the Judicial Research and Training Institute in South Korea and Japan.

12. Between "skill" and "competency," choosing only one term to use in this section is difficult. Conventionally, the term "skill" refers to an ability in a specific area and the term "competency" might incorporate but nonetheless refers to more than just a skill. Practical legal skills usually refer to drafting legal documents, legal communication, and legal negotiation. Understanding legal principles and legal reasoning seems to fall under legal competencies rather than legal skills. In this paper, however, for the sake of consistent terminology, the term "skill" is used in every field of lawyers' ability.

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form, these consist of problem solving, legal analysis, legal research, factual investigation, communication, counselling, negotiation, litigation and alternative dispute resolution (administrative skills necessary to organize and manage legal work) and recognizing and resolving ethical dilemmas. The report did not include "legal knowledge or understanding of legal rules" as a separate entry on this list, although it might fall under problem solving and/or legal analysis. However, "legal knowledge or understanding of legal rules" is itself so large and important to legal education that it should comprise its own entry in any list of legal skills.

Instead of attempting to define the meaning of legal theory education and practical training conceptually, Jun Park explains changes in South Korean legal education with reference to a spectrum depicting all aspects of legal education and professional training, which includes components that run from being purely academic to highly practical[13]:

1. Legal theory and legal doctrine.[14]
2. Teaching and learning how to think in order to apply legal theory to facts.
3. Teaching and learning how to apply legal theory to facts.
4. Teaching and learning a range of skills required as a lawyer, from interviewing clients to handling cases (aside from and in addition to those skills required for (3)).

This spectrum is beneficial, since it structures legal education while at the same time categorizing these stages, as opposed to relying on a purely conceptual definition of education in legal theory and practical training. However, it is not clear how items (1) and (3) are different—how teaching and learning to think about applying legal theory to facts isare different from the application of legal theory to facts. Further, this categorization seems to undermine its significance with regard to legal writing: while legal writing is undisputedly a fundamentally important skill in legal practice, its place within the above spectrum is unclear and should be clarified.

In order to overcome the problems inherent to the categorization of legal education based on the division between legal theory education and practical training, it is important to consider and analyze the skills required from lawyers, and how such skills could be taught and acquired, by looking at an example. This will help to clarify what we mean when we refer to legal theory education and practical training. It will be helpful to use a hypothetical case to identify the skills and competencies required, instead of dealing with them from a purely conceptual perspective.

2.2 A Hypothetical Case and the Relevant Skills

2.2.1 The Case

A, *B*, and *C* agreed to do business together, and the terms of this agreement are as follows:

1. *A* shall be responsible for running the company and, in return, will acquire 40% of the shares issued.
2. *B* and *C* will each acquire 30% of the shares in exchange for 30 units of consideration in cash.

13. Park (2015), p. 124.

14. Jun Park's definition of legal theory and doctrine is adapted from the definition previously set forth by Youngjun Kwon. According to Professor Kwon, "legal theory" refers to the systematic investigation of what law is and should be from a certain perspective. In comparison, "legal doctrine" refers to the body of legal principles made up by substantive law, including judgments, and/or schools of thoughts. "Legal practice" is defined as the process of interpreting and applying the law in relation to specific cases. Kwon (2008), p. 108.

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Company *X*, a stock company with a total capital of 100 units, was established. After one year, *B* and *C* discovered that *A* had neglected running company *X*. Upon discovering this, *B* and *C* want to divest *A* of *A*'s shares in company *X*, and sought lawyer *Y* for legal advice.

2.2.2 Skills Required

If *Y* (an average lawyer) does not have knowledge of company law, *Y* would not know where to begin. However, anyone equipped with basic knowledge of company law would know one should begin by examining laws for establishing a new company.

As for a person who has considerable knowledge of company law with practical experience, this person would know that, in this case, the issue is whether the consideration provided is valid—that is, whether a provision of labour in the future is a valid form of consideration in relation to issuing new shares. That would mean that this person would only have to refer to the relevant provisions on in-kind (non-cash) consideration and relevant case-law.

After confirming that the provision of labour is invalid for purposes of issuing shares, it would be necessary to consider the way by which the problem of the shareholder can be disputed. If *Y* is aware of declaratory actions, *Y* would advise *B* and *C* to file a declaratory action against *A*, seeking a declaration that *A* is not a shareholder of company *X*. In addition, it would be necessary to examine laws for making amendments to the Registry of Companies, as well as advising that the registered capital be changed from 100 to 60 units.

If *Y* is retained to handle this declaratory action, *Y* will be required to draft and file a petition. For this task, *Y* will have to know about the content, structure, style, and language required to set forth claims and evidence in a coherent fashion. In addition, *Y* will need to know about procedural matters, such as how to name the defendant and the court to which the petition should be submitted.

Throughout the entire case, *Y* will need to communicate effectively with the client to obtain the necessary facts and evidence. Also, *Y*'s understandings of how people form business partnerships, agree on business plans, and secure capital would also be relevant. Of course, bringing an action against *A* might not be the best way to resolve this situation. If *Y* can negotiate and settle with *A* (or *A*'s lawyer), this would also benefit *B* and *C*, as it would help save time and costs, in comparison with going to court. In this sense, *Y* should have negotiating skills.

2.3 Categories of Legal Skills

As considered above, handling a case requires a collection of skills that are often interrelated and difficult to separate from each other. These skills could be classified into the following four groups.

2.3.1 Skill 1

Knowledge of the law, including statutes and case-law, is undoubtedly crucial. Understanding different commentators' views of relevant proposals for reforms would also be helpful in certain instances. If knowledge concerning such proposals extended beyond a rudimentary grasp on the black letter law and was based on an understanding of fundamental legal principles that justified such reforms, then this would be invaluable.

In the above case, a knowledge and understanding of company law, and law suits regarding company affairs, would be fundamental. In addition, understanding theories

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related to the formation of companies (e.g. whether forming a company is contractual or not) would prove useful in developing arguments.

Such skills have been considered the province of conventional legal education—the study of legal theory wherein substantive law was taught and learned. Nonetheless, it said that legal doctrine and theory are best understood when contextualized, rather than taught simply as abstruse concepts. Therefore, more often than not, legal doctrines should be taught through the use of examples and cases.

2.3.2 Skill 2

This skill refers to the ability to spot issues in given facts, identifying relevant legal doctrines and applying them to patterns of facts. In the case above, it is necessary to identify the law regarding what a person needs to do to become a shareholder, whether the provision of labour at a future date is valid consideration to obtain shares, and whether a person automatically loses his or her status as a shareholder regardless of whether the person is registered as a shareholder in the register of shareholders, and then apply these laws to the case under consideration.

With reference to the case above, it is difficult to determine whether such skills fall under the category of legal theory education or practical training. Initially, it seems as though this skill would be more closely related to practical training, since it requires working with specific facts. However, the greater one's understanding of relevant legal doctrines and theories, the easier it would become to spot issues, identifying and then applying the relevant legal doctrines. From that perspective, this skill would fall under legal theory.

2.3.3 Skill 3

This skill consists in the ability to draft legal documents, such as letters or correspondences with other parties, draft applications, opinions, petitions, and judgments. The ability to draft legal documents is a skill that requires training separate from that of spotting issues and understanding legal doctrines. This would likely fall under practical training, as it would be taught with reference to specific facts and cases. However, it cannot be argued that an accurate understanding of legal doctrines forms the foundation for good legal writing and therefore to completely dissociate legal theory from this skill would be questionable.

2.3.4 Skill 4

The ability to communicate with clients, collate information from client interviews and review relevant documents, gather necessary evidence, negotiate, work in teams, and lead when necessary are all skills required from legal professionals. Moreover, it is clear that an understanding of commercial issues, such as principles of managing a company or management issues in relation to setting up a company, would help solve legal problems. These are skills necessary to succeed as a lawyer but that have not been taught in conventional legal education curricula. Skills such as these can undoubtedly be classified as practical training.

2.4 Analysis

The order in which we have analyzed these four skills does not represent a logical or practical order in which legal education is conducted. In civil-law jurisdictions like Korea, Japan, and Germany, law students start by learning legal doctrines (Skill 1). After that, they learn how to apply legal doctrines to facts (Skill 2). Finally, they practise drafting legal documents (Skill 3).

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Table 1. Four types of legal skills

Skill 1	Skill 2	Skill 3	Skill 4
Understanding legal doctrines, theories, and *de lege ferenda* (reform proposals)	Identifying issues, relevant legal doctrines, and applying doctrines to cases	Legal writing (petitions, judgments, memorandums, letters of opinions, correspondences, etc.)	Conducting research, gathering facts, communication, case management, negotiation, commercial awareness, leadership in a team

According to the case method used in US Law Schools, students begin by learning how legal doctrines have been applied to facts (Skill 2), at first studying case-law by reading judgments. Legal principles and doctrines are discussed and taught after analyzing cases (Skill 1). In problem-based learning, or employing the simulation method, students learn legal principles by analyzing specific cases, where Skills 3 and 2 are at the fore, while Skill 1 is acquired last. Also, it should be noted that Skills 1, 2, and 3 are not exclusive, but complement each other. That is, if one refines Skill 1, then this leads inevitably to the enhancement of Skills 2 and 3. Developing each skill results in advancing the other skills as well. This is why to be skilled in one area requires that one be skilful in all the other areas. Developing these skills will, therefore, follow a "spiral" movement.

In comparison, Skill 4 is developed somewhat independently from the other three skills. This is explained in Table 1.

From the perspectives of legal theory education and practical training, Skill 1 falls under legal theory education and Skill 3 primarily falls under practical training. In relation to Skill 2, there is overlap between legal theory education and practical training. As mentioned above, these three skills complement each other. Hence, the strict distinction between legal theory education and practical training (or legal theory education and legal skills) is largely worthless in relation to legal education.

Rather, to maximize the "spiral" effect in legal educational terms, it is necessary to appreciate the practical implications of law when teaching legal theory and maximize the application of legal theory in the process of practical training. When teaching legal theory, attention should thus be given to its practical implications. This could be termed "practice awareness." If Skill 1 is taught and learned with practice awareness, then it would doubtless increase the ability to learn new legal theories and principles, since abstract concepts in legal theories and principles are easier to understand in the context of practical application than without. As far as Skill 2 is concerned, practice awareness is attained throughout analysis and would require stronger practice awareness.

3. APPROACH TO SKILLS TRAINING

3.1 Comparison by Country

Worldwide, it is widely accepted that legal doctrine and theory (Skill 1) is taught and learned in the classroom. In Germany, Skill 1 is taught in Vorlesung, while Skill 2 is practised in Uebung. In both South Korea and Japan, while separate practice courses are sometimes offered, the application of laws also takes place during regular legal theory courses.

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Table 2. Where skills are obtained

		Skill 1	**Skill 2**	**Skill 3**	**Skill 4**
US		Law school	Law school	Law school/law firms	Law school/law firms
UK		Law faculty	Law faculty	LPC/TC	TC
Germany		Law faculty	Law faculty	Referendarzeit	Law firms
Japan		Law faculty	Law faculty	JTRI/law school	Law firms
Korea	Pre reform	Law faculty	Law faculty	JTRI	Law firms
	Post reform	Law school	Law school	Law school/law firms	Law firms

In the UK, legal doctrine and theory, and their application, are primarily taught throughout a three-year undergraduate course. Skills 1 and 2 are taught throughout this period as well. As mentioned above, the study of legal doctrine and theory (Skill 1) and the application of law (Skill 2) are combined throughout this period, owing to the common-law system, where legal theory is derived from the facts of the case. In England, where admission to the legal profession requires a two-year practical training period, Skills 3 and 4 are only developed in the Legal Practice Course—a practical skills course between university and the two-year practical training period.

Legal education in the US has no mandatory practical training requirement or formal law office training. Due to the absence of formal law office training, as in the UK, an attempt is made to teach Skills 3 and 4 in specific courses like legal writing, legal clinics, or legal negotiation in law schools.

3.2 Analysis

Table 2 shows that Skills 1 and 2 are mainly taught and trained at law schools in the classroom. In order to develop Skills 3 and 4, some law schools offer separate courses, usually in the name of practical training courses. In terms of providing practical training in universities, some problems seem inevitable. The classroom environment of law schools has inherent limitations in practical training, because it is difficult to replicate the most important aspects of real cases in the classroom. Practical training can be achieved much more effectively in the context of practice than the classroom.

A more fundamental question concerns an issue of priority: What should be taught first and to what extent? What is the most balanced mix for a curriculum? How many practical training courses should be open in law schools? To answer these questions, we have to anticipate the nature of law-school graduates. If they work mainly with routine legal cases, then they need more practical training, which would allow them to begin working upon graduation. If they work mainly with delicate and complex legal cases, then law schools should teach legal doctrines and principles, which would be the basis of their strategies and arguments. However, deciding on any one type of graduate is incredibly difficult, since graduates from different law schools might work in diverse areas.

For these reasons, law schools tend to set curricula common to all types of legal work, and such curricula tend to emphasize Skills 1 and 2. During the short three years of law school,[15]

15. I am sceptical of the claim that Skill 4 can be effectively handled in three years of law-school education. Skill 4 would have a different trajectory. As such, Skill 4 is not discussed in this paper.

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legal education curricula leave little room for practical training courses. Even if courses on legal clinics, writing, negotiation, and externships were offered, these would only be able to cover a fraction of what is involved.

Bearing in mind that legal education is a process, for effective learning, legal theory education and practical training should be combined. Limited numbers of separate courses on practical training is not an answer. Instead, practice awareness in every subject will enhance effectiveness in learning and practice.

4. CONCLUSION

Opening new courses aimed at improving practical training might mislead the fundamental problem in legal education. From a conceptual point of view, legal theory education can be separated from practical training, acknowledging that they have their own jurisdictions in practice. At the same time, however, there are areas where legal theory education and practical training seem to overlap. In the learning process, they are so interdependent that legal theory education without practice is hollow, and legal practice without legal theory is fragile. As such, a categorical approach to legal education, in terms of a hard and fast distinction between legal theory education and practical training, will only cause greater confusion.

Additionally, in real-life cases, lawyers often find themselves dealing with issues falling under the domains of theory and practice at the same time. For instance, in the example above, to realize that types of non-cash consideration for shares is a central issue in this case, a lawyer would have to know the legal doctrine stipulating that non-cash consideration for shares is restricted to certain types of assets. For this reason, neither legal theory education nor practical training should occupy exclusive stages of legal education generally or courses particularly. Rather, they should be combined organically. The organic combination of these two is, in effect, practice awareness.

Furthermore, it is likely that legal theory education will lead to better practical training, just as practical training will lead to better legal theory education. From this perspective, dividing the two is impractical. The argument that the two should not be characterized[16] can be understood along the same lines.

For this reason, developing "practice awareness" throughout legal education is important—the awareness that, even in cases where conventional legal doctrines are taught, thought should be given to how such doctrines permeate practice.

The first and most important function of law, as a mechanism of dispute resolution, can only be realized in practice. The ultimate goal of legal education is lawyers who can solve legal problems for clients. Lawyers realize their vocation in practice. Therefore, practice awareness should be maintained throughout the whole of legal education.

Practice awareness is important from the perspective of educational efficiency as well. In studying legal concepts and principles, practice awareness not only facilitates an understanding of abstract conceptual theory by providing specificity, but also provides motivation by encouraging reflection on future practice.

16. See Lim (2012), p. 85. "The distinction between legal theory and practical training is futile. Rather, legal theory should be developed with concrete legal disputes in mind."

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REFERENCES

Han, Sanghee (2008) "Educational Ideals and Direction for Professional Law Schools," in K. Kim, ed., *Law Schools and Legal Education*, Seoul: AcaNet, 79–82.

Kwon, Youngjun (2008) "Civil Procedure: Legal Theory, Doctrine and Practice." 49 *Seoul National University Law Review* 313–54.

Lim, Ji Won (2012) "The Education of Civil Law: A Purely Subjective Model Based on Personal Experiences." 132 *Justice* 73–102.

Maxeiner, James (2009) "Integrating Practical Training and Professional Legal Education: Three Questions for Three Systems," in J. Klabbers & M. Sellers, eds., *The Internationalization of Law and Legal Education*, The Hague: Springer Netherlands, 37–9.

Park, Jun (2015) "Legal Theory and Practical Training at Professional Law Schools," presented at the 120 Years of Contemporary Legal Education, SNU Law Research Institute Symposium, Seoul National University, 4 September 2015.

Sullivan, William M., Anne Colby, Judith W. Wegner, Lloyd Bond, & Lee S. Shulman (2007) *Educating Lawyers: Preparation for the Profession of Law*, London: John Wiley & Sons.

https://doi.org/10.1017/als.2016.35 Published online by Cambridge University Press