

TOWARDS A GLOBAL BAR: A LOOK AT CHINA, GERMANY, ENGLAND, AND THE UNITED STATES

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I. INTRODUCTION

The legal profession is globalizing rapidly. This is evidenced by the ease of world communications, burgeoning international issues,¹ and mergers among firms of different countries.² Bar admission requirements qualify attorneys to practice law. Around the world, law schools are sometimes under pressure to conform their curricula to state bar examinations. In the United States, often, applicants measure schools by their "bar passage rates."

How well do bar requirements prepare candidates for the practice of law, locally and globally? Also, do they accurately measure the knowledge, skills, and qualities an international attorney should possess?

A global look at bar requirements seeks to broaden the discussion of how best to train attorneys. By examining different country standards, any particular country can begin to "think outside the box." It also allows attorneys from different countries, who more and more are working side-by-side, to understand how they can practice law together. A third outcome might be to contribute to a dialogue for a global bar.³

This article explores the requirements necessary to practice law in four countries: China, England, Germany, and the United States. These include

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1. See David Banisar & Simon Davies, *Global Trends in Privacy Protection: An International Survey of Privacy, Data Protection, and Surveillance Laws and Developments*, 18 J. MARSHALL J. COMPUTER & INFO. L. 1, 5 (1999). For example, globalization removes the geographical limitations to the flow of data creating additional legal issues and concerns in areas of privacy, data protection, and surveillance. *Id.*

2. See, e.g., *Chance Backs Legal Merger*, THE TIMES (London), Sept. 6, 1999. In September 1999 the partners of Clifford Chance, Rogers & Wells and Pünder, Volhard, Weber & Axster voted for a three-way merger of their venerable English, American, and German law firms. *Id.* Other legal institutions have also responded to the challenges of globalization. The American Arbitration Association has launched their Global Center for Dispute Resolution Research. See *AAA Faces Up to 21st Century Issues – Fact-Finding, E-Commerce and Globalization*, METROPOLITAN CORP. COUNS. (Aug. 2002) Northeast Ed. at Special Story 1.

3. One may assert the next step in globalization is a bar that would allow a single attorney to practice in dozens of countries. This is already occurring in the European Union as EU Council directives have enhanced cross-border rights for individual practitioners. See generally Diane M. Venezia, Note, *An EU Lawyer's Right to Practice Throughout the European Union*, 3 CARDOZO J. INT'L & COMP. L. 427 (1995).

education, practice, exam, and moral requirements. The requirements for foreign attorneys are also considered. The article concludes with observations and suggestions for future practice.

In recent years, China has responded to rapid economic change and the need to produce hundreds of thousands of practitioners. England and Germany have responded to changes brought about by membership in the European Union. The United States has experienced less dramatic developments. However, foreign attorneys have long been welcome in the United States. Interestingly, the United States stands alone in not requiring supervised practice training of law candidates. This is perhaps because law training is a post-college degree in the United States.

II. THE COUNTRIES

A. *The People's Republic of China*

Overview

China is a country with an ancient history; however, its current legal system is very young.⁴ China began developing its present legal system in the late 1970s in its efforts to achieve economic modernization.⁵ Legal education has become more widely available since 1980, which has also led to increased legal education exchanges between China and other countries with an "ever-increasing" number of law students, teachers, and scholars flowing between Chinese and foreign institutions.⁶

China's system is a blend of civil, socialist, and increasingly American legal influences. Since the late 1970s, the legal service profession in China has also been "ever-expanding" and has become more lucrative, which continues to attract many people to the field.⁷ Whereas in 1979 there were 212 lawyers in seventy-nine firms in China, in 1999, there were 110,000 lawyers in nearly 9,000 law firms.⁸ However, there are still some aspects of the legal profession in China that need desperate help.⁹

As China advances rapidly in the development of its legal system, we can expect additional provisions and regulations to shape the process. Most

4. Shao Zongwei, *Lawyers Urged to Improve Ethics*, CHINA DAILY, Apr. 29, 1999, available at <http://www.chinadaily.com.cn/cndydb/1999/04/d2-8law.d29.html> (last visited Mar. 9, 2004).

5. *Id.*

6. Timothy A. Gelatt, *Lawyers in China: The Past Decade and Beyond*, 23 N.Y.U. J. INT'L L. & POL. 751, 758 (1991).

7. Shao Zongwei, *Lawyers Exam Sets Record*, CHINA DAILY, Sept. 10, 1999.

8. Shao Zongwei, *supra* note 4.

9. See Elisabeth Rosenthal, *In China's Legal Evolution, The Lawyers are Handcuffed*, N. Y. TIMES, Jan. 6, 2000, at A1 (a tragic account of the recent plight of criminal defense attorneys in China).

recently, in 2002, in accordance with the amended Judges Law, Prosecutors Law, and Lawyers Law, over 360,000 people took the newly instituted two-day State Judicial Exam in order to qualify for jobs as judges, prosecutors and practicing attorneys.¹⁰

One of China's major concerns is that many of its judges and prosecutors have little or no university or college-level legal training. Many judges actually attended law school after they became judges.¹¹

History

In traditional China, government, law, and courts existed without the existence of lawyers as an officially recognized occupational group.¹² Scholars of the Confucian classics dominated the ruling elite.¹³ Civil disputes were usually resolved informally through mediation, conducted by respected leaders or elders of clans, villages, and guilds in accordance with customary rules and prevailing notions of morality, which stressed harmony and the giving of concessions and discouraged litigation and the pursuit of self-interest.¹⁴

Interestingly, "*songshi*, meaning experts in litigation, began to practice as early as the Tang dynasty [(700-1000 AD)]. They learn[ed] their knowledge of the law and of judicial proceedings through apprenticeship or self-study, and offered the services of advising on litigious matters and drafting petitions and pleadings."¹⁵ However, their status was not officially recognized and they had no right to represent their clients in courts or in any other capacity.¹⁶ "The business which these *songshi* engaged in was not considered respectable."¹⁷ They were sometimes labeled *daobi xieshen*, or "evil gods of the knife-pen."¹⁸ This is understandable in a society where the concept of legal rights was not known, where social harmony was a paramount virtue, and where litigation and conflicts involving the pursuit of self-interest were discouraged and held in contempt.¹⁹

10. Vincent Cheng Yang, *Judicial and Legal Training in China-Current Status of Professional Development and Topics of Human Rights* 19-20 (Aug. 2002) (a background paper for the United Nations Office of the High Commissioner for Human Rights), at http://www.icclr.law.ubc.ca/publications/reports/Beijing_August_2002.pdf (last visited Mar. 9, 2004).

11. *Id.* at 5.

12. 12ALBERT H.Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 128 (3rd ed. 1993).

13. *Id.* at 17.

14. *Id.* at 12.

15. *Id.* at 13.

16. *Id.* at 13-14.

17. *Id.* at 14.

18. *Id.* at 128 (quoting Wu Lei, THE CHINESE JUDICIAL SYSTEM 351 (1988); Xiong Xianjue, THE CHINESE JUDICIAL SYSTEM 308 (1986)).

19. *Id.*

As China entered the twentieth century, it pursued attempts at Westernization of its political and legal system, including legislation for the legal profession.²⁰

Once established in 1949, the People's Republic of China (PRC) abolished the collection of laws established under the previous National Government.²¹ The first mentioning of lawyers in formal PRC legislation appeared in 1954.²² There was no broad statute regulating qualifications, organization, and lawyer conduct during the 1950s; however, the Ministry of Justice did establish a series of "legal advisory offices."²³ By 1957, there were around 800 legal advisory offices throughout China and a total of about 3000 lawyers.²⁴

The anti-rightist movement brought the beginning legal movement to a halt in 1957. Many of China's legal experts were transferred to the countryside to be "reeducated" through hard labor. The Ministry of Justice was abolished and the advisory offices were closed in 1959.²⁵ China had to emerge from a national nightmare during the late 1970s, the Cultural Revolution, before continuing work on the establishment of a modern Chinese legal system.²⁶

Governing Law

The governing law in China for attorneys is the Law of the People's Republic of China on Lawyers, promulgated May 15, 1996. The first of its kind, the law took effect in 1997 and clearly defines the rights and obligations of lawyers and law firms.²⁷ In 2001, China amended its Judges Law, Prosecutors Law, and Lawyers Law to increase the qualifications required for these posts.²⁸ In general, a lawyer must uphold the Constitution of the People's Republic of China, meet educational requirements, pass the national exam, have practice training in a law firm for one year, and be a person of good character and conduct.²⁹

Education

Legal education in China usually requires four to five years of education after the high school level. Attorneys in China are qualified by law faculties

20. *Id.* at 129.

21. Gelatt, *supra* note 6, at 752.

22. *Id.*

23. *Id.* at 753.

24. *Id.*

25. *Id.*

26. *Id.* at 754.

27. *Lawyers Playing More Important Role*, CHINA DAILY, Apr. 29, 1999.

28. Yang, *supra* note 10, at 19.

29. Law of the People's Republic of China on Lawyers, ch. II, art. 8.

of universities and colleges or must have qualifications from other faculties of universities or colleges to show that they possess the “professional knowledge of law.” They must also pass the uniform national judicial exam.³⁰ A look at the curriculum and subject areas of study from China’s Peking University can give us a picture of the typical law candidate’s studies. Peking University runs a four-year LL.B. program. Categories of courses include Theoretical Legal Science and Applied Legal Science. The first category, Theoretical Legal Science, includes Theories of Jurisprudence, Sociology of Law, Contemporary Western Jurisprudence, and the First Amendment to the U.S. Constitution.³¹ The second category, Applied Legal Science, includes Internet Law, Technology/Economy and Law, Labor Law and Social Protection Law, General Part of Civil Law, International Financial Law, and Environmental Law.³² In addition, LL.B students usually must write a thesis.³³

Practical Training

There is a required traineeship with a law firm for a full year. After completing the training period at a Chinese law firm a training appraisal report is issued.³⁴

Examination

From 1986 to 2001, China administered a uniform national examination formulated by the Judicial Administrative Department of the State Council for lawyers.³⁵ In 2002 the State Judicial Exam was instituted. It is required for judges, prosecutors, and lawyers. The examination is administered by the Ministry of Justice,³⁶ held once a year,³⁷ and is a closed-book exam.³⁸ Its contents include “theoretical jurisprudence, applied jurisprudence, existing legal provisions, legal practice and legal profession moralities.”³⁹

Theoretical jurisprudence includes the concept of the “rule of law, basic rights and freedoms, and the relationship between the state and the individuals.”⁴⁰ Applied jurisprudence includes criminal law, civil law, family law, procedural laws, labor law, environmental law, “laws on women and

30. Law of the People’s Republic of China on Lawyers, ch. II, art. 6.

31. Yang, *supra* note 10, at 10.

32. *Id.*

33. *Id.* at 12.

34. Law of the People’s Republic of China on Lawyers, ch. II, art. 10(3).

35. Law of the People’s Republic of China on Lawyers, ch. II, arts. 6, 7.

36. PRCLEG 2096, Measures for the Implementation of State Judicial Examination, art. 5 (Oct. 21, 2001).

37. *Id.* art. 6.

38. *Id.* art. 9.

39. *Id.* art. 7.

40. Yang, *supra* note 10, at 20.

children, and laws on association, trade unions, press and religions."⁴¹ Eligibility to take the exam requires being a PRC national, "abiding by the Constitution of the People's Republic of China, having the right to vote and stand for election, having full capacity for civil conduct," and meeting the educational requirements for either the Judges Law, the Prosecutors Law, or the Lawyers Law and being of "good character and conduct."⁴²

The profession is attracting hundreds of thousands of applicants. In 1999, 180,000 candidates registered to take the lawyers' examination. In 2000, 220,000 candidates took the last lawyers' examination.⁴³ In 2002, over 360,000 took the first State Judicial Exam.⁴⁴ This was a world history record.⁴⁵ Of these 360,000, "about one-third were staff members of the courts, procuratorates, police departments and other workers in the field of law."⁴⁶ Only 7% passed the examination.⁴⁷

Moral Character

China requires that the applicant be of good character in order to practice law. The following persons may not take the State Judicial Examination: persons who have been "subject to criminal punishment due to an intentional crime," those who have been discharged "from employment by a State organ" or whose license to practice law has been revoked, and those who cheated on the exam and have been disallowed from taking the exam for a period of time.⁴⁸ In addition, a person will not be issued a lawyer's practice certificate if he or she has no capacity or limited capacity for civil acts.⁴⁹

Foreign Attorneys

Foreign attorneys are not allowed to take part in the litigation process in China. They can neither interpret Chinese laws nor provide advisory papers concerning Chinese law.⁵⁰ Foreign attorneys can, and do, consult in China. The main work of foreign lawyers is in introducing foreign investment, representing Chinese clients in lawsuits in foreign countries, and providing

41. *Id.*

42. Law of the People's Republic of China on Lawyers, ch. II, art. 13.

43. Yang, *supra* note 10, at 20.

44. *Id.*

45. *Id.* at 3.

46. *Id.*

47. *Id.*

48. Law of the People's Republic of China on Lawyers, ch. II, art. 14.

49. Law of the People's Republic of China on Lawyers, ch. II, art. 9(1).

50. PRCLEG 2402, Provisions of the Ministry of Justice on the Execution of the Regulations on the Administration of Foreign Law Firms' Representative Offices in China, art. 32 (June 25, 2002). See also Shao Zongwei, *Legal Service Sector to Open Wider to Foreigners*, CHINA DAILY (Aug. 14, 1998), available at <http://www.chinadaily.com.cn/cndydb/1998/08/d1-598.h14.html> (last visited Mar. 9, 2004).

advice in matters of trade, technology transfer, real estate, intellectual property rights, bonds, and securities.⁵¹ Even lawyers from Hong Kong are not eligible to take the State Judicial Examination.⁵²

Summary

As China continues to develop its legal system, its requirements to practice law will also develop and change. The legal profession is growing in acceptance from what was once an unpopular profession.⁵³ China's desire to achieve greater economic development has led to an explosion in the number of legal personnel being trained. There is also a very critical need to provide more training for China's current judges.

B. England

Overview

England uses a common law system. There are two main types of law practitioners: barristers and solicitors. In 2000, there were around 90,000 solicitors in England and Wales and 10,000 barristers.⁵⁴ The Law Society regulates solicitors; the General Council of the Bar (the Bar Council) regulates barristers.⁵⁵ Traditionally, only solicitors dealt directly with clients as general agents,⁵⁶ and only barristers could appear in the higher courts (Crown courts, High Court, Court of Appeal and House of Lords).⁵⁷ Barristers belong to one of the four Inns of Court described further below. Over the years, the distinction between solicitors and barristers has begun to blur.⁵⁸

The following deals mainly with the requirements for solicitors, with a brief summary of barrister requirements. For both solicitors and barristers there are three training paths: the law graduate path, the non-law degree path, and the non-graduate path. All three paths include a training period and a practice course.

51. Zongwei, *supra* note 50.

52. Cliff Buddle, *Tall Order for SAR Lawyers to Climb Wall; Trade Rules Have Made China Cautious About Giving Hong Kong Law Firms Preferential Treatment*, S. CHINA MORNING POST, Mar. 8, 2002, at 18.

53. *Lawyers Playing More Important Role*, *supra* note 27.

54. MARTIN PARTINGTON, AN INTRODUCTION TO THE ENGLISH LEGAL SYSTEM 224 (2d. ed. 2002).

55. *Id.* at 226.

56. RICHARD L. ABEL, THE LEGAL PROFESSION IN ENGLAND AND WALES 139 (Basil Blackwell ed., 1988).

57. *Id.* at 35.

58. PARTINGTON, *supra* note 54, at 227-29.

History

English legal history shows remarkable continuity, dating from the King of Kent in the late 500s.⁵⁹ It is not codified and mainly judicial in nature.⁶⁰ It is an amalgamation of common law, equity, and some law with Roman roots.⁶¹ The history of the barrister dates back to the serjeant-at-law. The Crown appointed these advocates and, in the thirteenth century, only they could appear in the Court of Common Pleas.⁶² They held this privilege until 1846.⁶³ Eventually these serjeants became common law judges and had their own Inns.⁶⁴ Originally, barristers were apprentices of serjeants and they formed the four Inns still in existence today. The Inns were at first educational institutions.⁶⁵ Barristers also received the unique privilege of appearing before the King's or Queen's Bench.⁶⁶

The origins of the solicitor date to the *attornatus*, who was an officer of the court in the Middle Ages.⁶⁷ Interestingly, solicitors were expelled from the Inns in the 1500s.⁶⁸ The Law Society was formed in 1845.⁶⁹ Beginning in the 1800s, solicitors had to complete a formal education and apprentice for several years.⁷⁰ An examination in law was required for solicitors in 1836.⁷¹

Governing Law

The Law Society prescribes the legal education and training required to qualify as a solicitor in England and Wales in accordance with the Solicitors Act of 1974.⁷² The Training Regulations of 1990⁷³ apply the Solicitors Act.

Education

Two of the three paths to becoming a solicitor require a degree, either in law or another subject. Around 25% of solicitors do not have a law degree.⁷⁴

59. See O. HOOD PHILLIPS, *A FIRST BOOK OF ENGLISH LAW* 1 (7th ed. 1997).

60. *Id.* at 3.

61. *Id.* at 6-7.

62. ABEL, *supra* note 56, at 35.

63. *Id.*

64. *Id.*

65. *Id.* at 38.

66. *Id.* at 35.

67. PETER SHEARS & GRAHAM STEPHENSON, *JAMES' INTRODUCTION TO ENGLISH LAW* 52 (13th ed. 1996).

68. ABEL, *supra* note 56, at 139.

69. SHEARS & STEPHENSON, *supra* note 67, at 52.

70. ABEL, *supra* note 56, at 142.

71. *Id.* at 41.

72. *The Students' Guide to Qualification as a Solicitor*, LAW SOC'Y, July 17, 1999, at 4 [hereinafter *Students' Guide*].

73. *Training Regulations 1990*, regulations 2, 7 LAW SOC'Y, Aug. 1998, Version 4.

74. JACQUELINE MARTIN, *THE ENGLISH LEGAL SYSTEM* 180 (1997).

After receiving a degree, students take a Legal Practice Course, before working for a solicitor's firm for two years. The Training Regulations state that a person satisfies the academic stage of training by:

- (i) graduating with a qualifying law degree incorporating a legal practice course; or
- (ii) graduating with a qualifying law degree; or
- (iii) passing a common professional examination course; or
- (iv) gaining a post-graduate diploma in law; or
- (v) satisfactorily completing a course of study which incorporates the foundations of legal knowledge and a legal practice course.⁷⁵

Options (i) and (ii) are commonly known as the Law Degree Route. Options (iii) and (iv) are commonly known as the Non-Law Degree Route.⁷⁶ There is also a Non-Graduate Route, which allows non-degreed candidates who are working in legal employment to qualify as a solicitor.⁷⁷ They fulfill their academic stage by options (iii) or (v). Key to fulfilling the academic stage is study of the Seven Foundations of Legal Knowledge. They are Obligations I (Contracts), Obligations II (Torts), Criminal Law, Equity and the Law of Trusts, the Law of the European Union, Property Law, and Public Law.⁷⁸

The Law Degree Route is the quickest and most common route to qualify as a solicitor.⁷⁹ However, this route is very competitive. Applicants need high grades in any academic subject to be considered. The Non-Law Graduate can have a degree in any subject but must go through the Common Professional Examination or Post-Graduate Diploma in Law.⁸⁰ The preparation required for the Common Profession Examination amounts to one academic year (two years for the part-time program). During this time the applicant studies the Seven Foundations of Legal Knowledge. The Common Professional Examination is given in early summer.⁸¹ A three-hour paper is due in each of the seven courses and an additional area of law. A candidate will normally pass the examination if all of the papers are successfully completed on the same occasion.⁸² Barring the most exceptional circumstances, a candidate may not attempt any paper on the Common Professional Exam on more than three occasions.⁸³

75. *Training Regulations 1990*, *supra* note 73, regulations 2, 7.

76. *Students' Guide*, *supra* note 72, at 4.

77. *Id.*

78. *Id.* at 6.

79. *Id.* at 4.

80. *Id.* at 18.

81. *Id.* at 15.

82. *See Students' Guide*, *supra* note 72, at 14.

83. *Id.*

All candidates who are eligible for the Common Professional Examination may apply for a Diploma in Law Course. The course is approximately thirty-six weeks long and varies from institution to institution.⁸⁴ The Non-Graduate route is open to persons who do not wish to take a degree and are working in legal employment. The process is lengthy, demanding, and academically challenging. This process requires one to qualify as a member of the Institute of Legal Executives. Study is done usually part time at local colleges or home study courses. There are several paper examinations.⁸⁵

Practical Training/Examination

Commonly, the academic stage of training must precede the vocational stage of training.⁸⁶ The vocational stage of training requirement is fulfilled by:

- (1) completing a legal practice course, or an integrated course, or an exempting law degree; and
- (2) serving a training contract (equal to two years full-time); during which
- (3) a professional skills course, and such other courses as the Law Society may prescribe, are completed.⁸⁷

The purpose of the Legal Practice Course is to ensure that trainee solicitors entering training contracts have the necessary knowledge and skills to undertake appropriate tasks under proper supervision during the contract. A full-time Legal Practice Course runs for one academic year; a part-time course runs for two years.⁸⁸ The Legal Practice Course includes core courses in Ethics, Skills (advocacy, interviewing, writing and drafting, and practical research), Taxation, European Union Law, and Probate and Administration of Estates. There are also compulsory areas, which include Business Law and Practice, Conveyancing, and Litigation and Advocacy. Other areas of law fall into elective areas like Private Client and Corporate Client work and pervasive areas such as Accounts, Revenue Law, and Professional Conduct and Client Care.⁸⁹

Candidates are responsible for finding their own employment that will fulfill the training contract. A firm or organization carries out the Training Contract as authorized by the Law Society. Larger firms offer the majority of training places and usually recruit two years in advance.⁹⁰ The Training

84. *Id.* at 16.

85. *Id.* at 18.

86. *Training Regulations 1990, supra* note 73, regulation 14(2).

87. *Id.* regulation 14(3).

88. *Students' Guide, supra* note 72, at 20.

89. *Id.*

90. *Id.* at 30.

Contract usually lasts for two years.⁹¹ Sometimes, the training contract must provide for a salary no less than that prescribed by the Society.⁹² A training establishment may have up to two trainee solicitors for each solicitor/partner or solicitor/director in private practice or each solicitor in any organization who is not forbidden to take on a trainee solicitor.⁹³

During the Training Contract it is expected that the applicant practice and learn communication skills, practice support skills, legal research, drafting, interviewing and advising and gain experience in negotiations, advocacy and oral presentation skills.⁹⁴ Additionally the applicant must gain experience in three other areas from a list of twenty-three areas such as Banking, Employment, Family, Immigration, Personal Injury, Intellectual Property, Welfare, etc.⁹⁵ There are checklists for each subject showing the tasks the trainee should be able to perform by the end of his or her training.⁹⁶

The training establishment must provide a desk available for the trainee solicitor's own work, appropriate secretarial support, and convenient access to a library or suitable material for research.⁹⁷ A training principal ensures that each trainee solicitor maintains a training record for inspection at review of progress meetings.⁹⁸ In addition to regular meetings with each trainee solicitor, there are adequate arrangements for daily guidance.⁹⁹

On a day-to-day basis, a supervisor should:

1. give the trainee tasks and work;
2. give clear instructions and check that the trainee understands them;
3. provide the trainee with sufficient factual background;
4. suggest available office or library reference materials;
5. provide the trainee with a realistic framework for the trainee to complete the task and work;
6. answer the trainee's questions;
7. assign the trainee tasks with an increasing degree of difficulty;
8. ensure that the trainee has enough but not too much work;
9. provide a balance of work across substantive and procedural areas;

91. *Training Regulations 1990*, *supra* note 73, regulation 21(1).

92. *Id.* regulation 23(ii), (iii).

93. *The Training Code*, 1(ii), THE LAW SOC'Y, Version 3, Oct. 1997.

94. *Information About Your Training Contract 1999*, THE LAW SOC'Y, Version 4, Apr. 1999.

95. *Id.* at 3.

96. *Id.*

97. *The Training Code*, *supra* note 93, at 1(iii).

98. *Id.* at 2(iii).

99. *Id.* at 4(iii).

10. provide work which will enable the trainee to use different skills;
11. create an environment where the trainee is not afraid to ask questions;
12. encourage the trainee to propose solutions even though they may not be correct;
13. provide regular feedback and guidance on the trainee's performance;
14. ensure that the trainee's achievements and improvements are recognized and praised;
15. ensure that aspects of the trainee's performance that need to be improved are discussed thoroughly with the trainee;
16. encourage the trainee to develop him or herself; and
17. ensure that the trainee keep any training record required by the firm of the Law Society.¹⁰⁰

In addition, the trainee has the responsibility to:

1. inform the firm if it is not fulfilling its obligations particularly with regard to basic skills and legal topics;
2. manage his/her time, effort and resources to develop good working practices;
3. seek clarification when tasks and work are ill-defined or too open-ended or the trainee is given insufficient facts;
4. inform the firm when the trainee has too much or too little work; the tasks are too challenging or not challenging enough, or there is no variety in the type of work and tasks that have been allocated to the trainee;
5. be open and honest when the trainee is given feedback or appraised on his or her performance;
6. take responsibility for his or her own self-development; and
7. inform his or her supervisor when a mistake is made.¹⁰¹

During the Training Contract, one must also complete the Professional Skills Course.¹⁰² This is comprised of three compulsory courses: Advocacy and Oral Communication, Financial Awareness and Business Accounts, and Ethics and Client Responsibilities.¹⁰³ The Law Society states, "These topics

100. *Information About Your Training Contract 1999*, *supra* note 94, at 2.

101. *Id.*

102. *Students' Guide*, *supra* note 72, at 32.

103. *Id.*

are ones which the Society believes are best studied once you have some experience of work in a solicitor's office."¹⁰⁴ The Training Contract is normally waived for those pursuing the Non-Graduate Route.¹⁰⁵ After the Training Contract is completed, the applicant can be added to the Roll of Solicitors.¹⁰⁶

Moral Character

The candidate applies for the Roll of Solicitors approximately eight weeks before the expected completion of the Training Contract.¹⁰⁷ The application must include successful completion of all training, and the candidate and their principal supervisor must certify that there are no circumstances that may affect the character and suitability of the applicant, including criminal convictions. If the Society at any time is not satisfied as to the character and suitability of an unadmitted person to become a solicitor, it may cancel enrollment, prohibit entry into a training contract, or discharge a training contract.¹⁰⁸

Foreign Attorneys

Sections 20 and 21 of the Solicitors Act 1974 prohibit anyone other than a certified English solicitor from acting as an English solicitor.¹⁰⁹ Foreign lawyers have two choices. They may practice in England under their own home title, e.g., *abogado*, *Rechtsanwalt* or attorney-at-law. Alternatively, they may re-qualify as an English solicitor.¹¹⁰ Foreign lawyers do not have a right of audience in any of the English courts except such rights as derive from European Union law. They may not employ a person to act as a solicitor for the public.¹¹¹ However, if a foreign lawyer registers with the Law Society, they may enter into a partnership with a solicitor. The partnership of which the solicitor(s) and the foreign lawyers are members is known as a multi-national partnership.¹¹²

The Law Society of England and Wales maintains a list of foreign lawyers in the country who report their presence in accordance with section 89 of the Courts and Legal Services Act 1990. The Foreign Lawyers Registration Regulations 1995 set out what must be on the register, what must be done to

104. *Id.*

105. *Id.* at 3.

106. *Id.*

107. *Information About Your Training Contract 1999*, *supra* note 94.

108. *Training Regulations 1990*, *supra* note 73, regulation 33(2).

109. *Foreign Lawyers in England and Wales*, LAW SOC'Y, Int'l Note § 2, Mar. 16, 1999.

110. *Information Pack III*, in *Foreign Lawyers in England and Wales*, THE LAW SOC'Y., Mar. 16, 1999, 2-4 [hereinafter *Information Pack III*].

111. *Id.* at 3.

112. *Information Pack III*, *supra* note 110, at 3.

register, renew registration, change a name on the register, and remove a name from the register. The formalities of re-qualification depend on the jurisdiction of original qualification. It is not necessary to have British nationality in order to qualify as a solicitor. Lawyers from the European Union and European Economic Area member states, as well as from certain Commonwealth and Common Law jurisdictions, are entitled to re-qualification as solicitors by way of a special Qualified Lawyers Transfer Test. The test covers the following subjects: Property, Litigation, Professional Conduct and Accounts, and Principles of Common Law.¹¹³ Separate procedures exist for other lawyers.

Barristers

There are three routes to becoming a barrister: law degree, non-law degree, and non-graduate mature student.¹¹⁴ Those who do not have a law degree must take the Common Professional Examination Course.¹¹⁵ All three routes include membership in one of the four Inns of Court: the Inner Temple, Middle Temple, Gray's Inn, and Lincoln's Inn. Each student must satisfy the requirement of "term keeping" by attending twelve qualifying sessions at his or her Inn of Court.¹¹⁶ A "qualifying session" is an educational and collegial event.¹¹⁷ Before 1997, candidates had to dine a certain number of times at their Inn of Court in order to keep terms.¹¹⁸

A student must complete an Academic Stage and a Vocational Stage before being "called to the bar."¹¹⁹ The Academic Stage may be fulfilled by either obtaining a law degree, another degree, or by completing the Common Professional Examination Course.¹²⁰ Both the law degree and the Common Professional Examination Course must include a "study of the 'foundations of legal knowledge' and one other area of legal study, and assessments and examinations in those subjects."¹²¹ The Foundations of Legal Knowledge are:

- (i) Obligations I (Contract)
- (ii) Obligations II (Tort)
- (iii) Criminal Law
- (iv) Public Law

113. *The Qualified Lawyers Transfer Regulations* 1990, THE LAW SOC'Y., Regulation 4 (amended July 16, 1998).

114. The Consolidated Regulations of the Inns of Court and the General Council of the Bar 12, available at <http://www.legaleducation.org.uk/careers/regs.php> (last visited Oct. 1, 2002) [hereinafter Consolidated Regulations].

115. *Id.* at 12(a)(ii).

116. *Id.* at 9.

117. *Id.* at 9(f).

118. See MARTIN, *supra* note 74, at 184.

119. Consolidated Regulations, *supra* note 114, at 4, 11.

120. *Id.* at 12.

121. *Id.* at Schedule 1.

- (v) Property Law
- (vi) Equity and The Law of Trusts
- (vii) Foundations of EU Law.¹²²

Finishing a Vocational Course completes the Vocational Stage.¹²³

A student is then “called to the bar” after completing the Bar Vocational Course. The Vocational Course teaches “skills, knowledge and attitudes” required of barristers.¹²⁴ The student must be at least twenty-one years of age to be called to the bar.¹²⁵ Then the student must complete a pupillage before practicing as a barrister. The pupillage consists of a “non-practicing six months” and a “practicing six months.”¹²⁶ The practicing six months may be spent with a barrister, solicitor, or lawyer in a Member State of the European Union.¹²⁷ A Pupil Master usually may not supervise more than one pupil at a time.¹²⁸

Previously, barristers took a Bar Examination. The first law examination for barristers began in 1872.¹²⁹ In 1980, the pass rate was 87%.¹³⁰ The Bar Examination is being faded out in favor of the Vocational Course. Solicitors may apply to become barristers.¹³¹ A European attorney may register with one of the Inns under his home professional title.¹³² He or she may also apply to become a barrister. This usually entails passing an Aptitude Test and attending six qualifying sessions.¹³³ Applicants are ineligible for the Bar if they are engaged in an “incompatible” occupation, have been convicted of a “relevant criminal offence,” have had a bankruptcy order against him, or have been prohibited from practicing any profession.¹³⁴

Summary

The two branches of the legal profession in England have two separate training regiments. The Law Society has prescribed detailed requirements for academic and vocational training for solicitors. There are three routes to becoming a solicitor. The most common route is to graduate with a law degree, then take a legal practice course (one year), and then enter into a two-

122. *Id.* at Schedule 1.

123. *Id.* at 16.

124. *Id.* at Schedule 1.

125. *Id.* at 22(a).

126. *Id.* at 41.2.

127. *Id.* at 46.1.

128. *Id.* at 47.2.

129. ABEL, *supra* note 56, at 42.

130. *Id.* at 43.

131. Consolidated Regulations, *supra* note 114, at 35.

132. *Id.* at 28.

133. *Id.* at 30(d), (h).

134. *Id.* at 4.

year training contract. The two-year training contract also includes the Professional Skills Course that must be completed prior to applying for the Roll of Solicitors. The academic stage includes learning the Seven Foundations of Law and many practical courses in the skills of advocacy, drafting, and negotiations.

There are also three routes to becoming a barrister: law degree, non-law degree and non-graduate experienced student. Students must belong to and keep terms at one of the Inns of Court. Their pupillage is only one year long. They also are required to take a Vocational Course. The differences in training solicitors and barristers are blurring. In either case, the mentoring and careful supervision of trainees in England is to be particularly commended. Also, the eligibility of European Union lawyers to practice in England and the broadening of trainee options to article elsewhere will no doubt lead to further changes.

C. Germany

Overview

Germany's law is based on a civil law system. Today's requirements for attorneys (*Rechtsanwälte*) trace their beginnings to eighteenth century Prussia.¹³⁵ Federal and state law governs the requirements for attorneys. Attorneys have a long and arduous path to admission to practice including university training, state-supervised professional training, and two state examinations. Since the reunification of Germany, requirements for the legal profession have also become fairly uniform throughout Germany.

History

German law has its roots in Roman and canon law.¹³⁶ The initial requirement for five years of legal education in Germany developed in 1455.¹³⁷ In 1713, Prussia required all judges to show adequate theoretical knowledge and practical experience¹³⁸ by observing the courts at work,¹³⁹ leading to the preparatory service requirement as a part of the legal education requirements in Germany.¹⁴⁰

135. INTRODUCTION TO GERMAN LAW 28 (Werner F. Ebke & Matthew W. Finkin eds., 1996).

136. NIGEL G. FOSTER, GERMAN LAW & LEGAL SYSTEM 6 (1993).

137. Juergen R. Ostertag, *Legal Education in Germany and the United States—A Structural Comparison*, 26 VAND. J. TRANSNAT'L L. 301, 307 (1993).

138. *Arbeitskreis für Fragen der Juristenausbildung, Die Ausbildung der Deutschen Juristen* 52 (1960) [hereinafter *Arbeitskreis*].

139. Ostertag, *supra* note 137, at 308.

140. *Arbeitskreis*, *supra* note 138, at 54.

In 1749, Prussia's Codex Fridericiani Marchici established a detailed set of state exams and preparatory services for judges.¹⁴¹ In 1877, the Judiciary Constitutional Act established the legal education framework for the entire German Reich with a two-phase legal education system. The original need of eighteenth century Prussia to train a uniform, loyal, and well-qualified cadre of judges to govern a diverse and spread out geography has left its imprint on German legal training today.¹⁴²

Governing Law

Government control of the German legal education process exists through detailed federal and state legislation. The governing law in Germany for judges is the *Deutsches Richtergesetz*.¹⁴³ The governing law for attorneys is the *Bundesrechtsanwaltsordnung* (BRAO), which contains the rights and obligations of attorneys.

Every major change of legal education must gain federal and state approval, making change more difficult to introduce.¹⁴⁴ There are sixteen *Länder*, or states. While this system makes it more difficult to change, the quality of legal education is basically uniform throughout the country.¹⁴⁵ Therefore, the reputation of the university plays a lesser role as compared to some western countries, such as the United States.¹⁴⁶

Education/Practical Training

Students usually enter a university between the ages of nineteen and twenty-two.¹⁴⁷ Although university education is free,¹⁴⁸ students must pass two state examinations and complete university and state-supervised practical training. Before the first state examination (*Erste Staatsexamen*), students usually take three and a half years of study.¹⁴⁹ However, many students take six years to complete this first phase; the absolute minimum is two years.¹⁵⁰ Most applicants are usually admitted to law school with classes of four to five hundred students.¹⁵¹

141. *Id.* at 52.

142. Ebke & Finkin, *supra* note 135, at 28.

143. Deutsches Richtergesetz (Auszug) [German Federal Judicial Office Act] (July 1, 2003) [hereinafter *DrIG*].

144. Ostertag, *supra* note 137, at 320.

145. *Id.* at 321.

146. *Id.*

147. FOSTER, *supra* note 136, at 82.

148. Philip Leith, *Legal Education in Germany: Becoming a Lawyer, Judge, and Professor*, 4 WEB J. CURRENT LEGAL ISSUES 3 (1995).

149. FOSTER, *supra* note 136, at 84.

150. *Id.*

151. Ebke & Finkin, *supra* note 135, at 30.

The German Law on the Judiciary (*Deutsches Richtergesetz*; DRiG) requires certain core subjects during this first phase: Civil Law, Criminal Law, Public Law and Procedural Law, including that of the European Community, Legal History, Legal Philosophy, and Jurisprudence.¹⁵² Although elective courses are available, these core subjects take up most of a student's semesters.¹⁵³ Electives may cover administrative law, labor law, company law, commercial law, or other subjects.¹⁵⁴ In addition to taking required courses before the first state examination, students must also spend three periods of one month in practical training.¹⁵⁵ They also usually complete written assignments (*Hausarbeiten*) and tests in the three core areas of civil law, criminal law and public law before qualifying to take the first state examination. Requirements vary among the *Länder*.

Requirements also vary among the *Länder* for the first state examination. The Court of Appeals (*Oberlandesgericht*) of each region administers the exam.¹⁵⁶ Usually, the exam consists of several five-hour written tests (*Klausur*), and a one-hour oral exam.¹⁵⁷ In Bavaria, students write eight five-hour papers: four in private law, one in criminal law, two in public law, and one of their choice.¹⁵⁸ One practitioner and one professor grade papers.¹⁵⁹ For each paper, a student must write a legal opinion for a hypothetical situation.¹⁶⁰ This opinion must include all relevant legal issues and arguments.¹⁶¹

If the student achieves a certain grade, he may take the oral exam.¹⁶² The oral exam is administered to between four and five students at once¹⁶³ and takes several hours, allowing each candidate about an hour. Each panel of graders for the oral exam includes two practitioners and two professors.¹⁶⁴ The oral exam covers private law, criminal law, public law, and a subject of the student's choice.¹⁶⁵ Private law includes obligations, property, family law and succession, commercial law, company law, and labor law.¹⁶⁶ Electives range from legal history to antitrust law.¹⁶⁷

152. FOSTER, *supra* note 136, at 68. See also DRiG § 5a (2) [German Federal Judicial Office Act] (July 1, 2003).

153. FOSTER, *supra* note 136, at 68.

154. *Id.*

155. DRiG § 5a (3).

156. Ebke & Finkin, *supra* note 135, at 28.

157. FOSTER, *supra* note 136, at 69.

158. Ebke & Finkin, *supra* note 135, at 29.

159. *Id.*

160. *Id.*

161. *Id.* at 31.

162. *Id.* at 29.

163. *Id.*

164. *Id.* at 29.

165. *Id.*

166. *Id.*

167. *Id.*

The exams may only be retaken once, unless a *Land* allows for a “free shot,” or *Freischuss*, after two and a half years of university study.¹⁶⁸ Of some 15,000 law students, only approximately 7,000 complete their first phase. Of these, 25% fail the first state examination.¹⁶⁹ In 1992, 33.8% had only a passing score, and only 3.2% received a “good” or “very good” score.¹⁷⁰

If students pass the first state examination, they enter a two-year training period before qualifying to take the second state examination. This professional training period is known as *Referendarzeit*.¹⁷¹ During this period, students are known as *Referendar* and are temporary civil servants. The state organizes and pays for their professional training.¹⁷² In 1995, they were paid around 1,800 DM a month.¹⁷³ They must serve in four mandatory positions (*Stationen*) for a minimum of three months each and in one position of their choice for four to six months.¹⁷⁴ The mandatory positions are with a civil court, a criminal court or prosecutor’s office, an administrative body, and an attorneys’ office.¹⁷⁵ The optional placement may be with a court or public body, a notary, a trade union, a business, or in another legal jurisdiction.¹⁷⁶ During the *Referendarzeit*, the students learn how to draw pleadings, draft acts, and write judgments.¹⁷⁷ Trainees also attend courses run by judges or other civil servants.¹⁷⁸ These sessions focus on court procedures and case analysis.¹⁷⁹

After the *Referendarzeit*, the students may return to school for additional preparation for the second state examination.¹⁸⁰ The second state examination (*Zweites Staatsexamen* or *Grosse Staatsprüfung*) is grueling and may include up to twelve written or oral exams between three and eight hours in length.¹⁸¹ This is sometimes done over a period of three weeks.¹⁸² Once a person has passed the second state examination, he or she is called an *Assessor* or *Volljurist*. Most *Assessoren* are close to thirty years of age.¹⁸³ Around 20-25%

168. FOSTER, *supra* note 136, at 69.

169. Ebke & Finkin, *supra* note 135, at 31.

170. *See id.*

171. FOSTER, *supra* note 136, at 86.

172. *Id.*

173. Leith, *supra* note 148, at 7.

174. FOSTER, *supra* note 136, at 69.

175. DriG § 5b (1) [German Federal Judicial Office Act] (July 1, 2003).

176. *Id.*

177. Ebke & Finkin, *supra* note 135, at 31.

178. *Id.* at 32.

179. REGULATION OF PROFESSIONS: A LAW AND ECONOMICS APPROACH TO THE REGULATION OF ATTORNEYS AND PHYSICIANS IN THE US, BELGIUM, THE NETHERLANDS, GERMANY AND THE UK 227 (Michael Faure et al. eds., 1993).

180. FOSTER, *supra* note 136, at 69.

181. *Id.*; Ebke & Finkin, *supra* note 135, at 32.

182. Ebke & Finkin, *supra* note 135, at 32.

183. *Id.*

will eventually become judges.¹⁸⁴ They may also become notaries, prosecutors, private practitioners, and legal advisors.¹⁸⁵

Interestingly, many students (sometimes 90% in some universities) take private cram courses (*Repetitorium*) for up to eighteen months to prepare for the state examinations.¹⁸⁶ Usually, students will attend weekly classes of about three to four hours.¹⁸⁷ Before reunification, lawyers in East Germany were required to have four years of university study, with one year spent in practice, before passing one exam.¹⁸⁸ Since 1991, the new *Länder* have the same requirements as the rest of Germany.¹⁸⁹

Moral Character

Candidates applying for admission to the court can be refused admission for certain conduct and disqualifying behavior.¹⁹⁰ The following offenses, if found guilty, will disqualify a candidate: unworthy conduct, which makes him appear unfit to exercise the profession; a clear breach of the duty of candor when applying for admission; use of a "doctoral" qualification which has not been earned; dishonest concealment of income from the revenue authorities; and alcoholism.¹⁹¹ Additionally, a candidate who is found to oppose the democratic order, leaving him open to criminal sanctions, or conducting activity "incompatible" with the profession can be refused admission.¹⁹²

Foreign Attorneys

Lawyers within the European Union may practice in other member states, including Germany.¹⁹³ They must use the professional title of their home State¹⁹⁴ but may qualify as *Rechtsanwälte* after a period of three years of practicing German law¹⁹⁵ or after passing an aptitude test.¹⁹⁶ The examination consists of a written and oral test and is conducted in German.¹⁹⁷

184. FOSTER, *supra* note 136, at 70.

185. Ebke & Finkin, *supra* note 135, at 32.

186. FOSTER, *supra* note 136, at 70.

187. Leith, *supra* note 148, at 5.

188. FOSTER, *supra* note 136, at 71.

189. *Id.* at 89.

190. Institute of European Law, available at http://elixir.bham.ac.uk/Country%20information/Germany/lawyers_frameset.htm (last visited Mar. 26, 2003)

191. *Id.*

192. *Id.*

193. Law Regulating the Activity of European Lawyers in Germany § 2(1) (2000) [hereinafter EuRAG].

194. EuRAG § 2(1).

195. EuRAG § 11(1).

196. EuRAG § 16.

197. EuRAG § 21.

The written part consists of two papers on one compulsory subject and one elective subject.¹⁹⁸ The oral part consists of a presentation and interview.¹⁹⁹

Summary

Lawyers in Germany undergo rigorous academic and training requirements within a framework established in eighteenth century Prussia. Of particular note are two arduous state examinations and a two-year training period where the state pays candidates to train in mandatory public and private legal offices. The use of "cram courses" is popular in Germany. Recently lawyers from member states of the European Union have been allowed to qualify as *Rechtsanwälte*.

As the European Union continues to develop and solidify, more changes will come. The EU has extensive rulemaking powers and has used them to revolutionize competition law throughout Western Europe, establish a monetary union, transform national labor workers into continent-wide labor markets, and begin the process of harmonizing private and criminal law throughout western Europe.²⁰⁰ The EU model may be a predecessor to a much larger unified global law community in the future.

D. United States

Overview

The U.S. legal system is rooted in the English common law with judicial review of legislative acts. The American Bar Association has been given the authority to oversee acceptance to the bar in the United States. Each state, however, has bar examiners who are given authority by the judiciary to administer the bar exam and regulate the requirements for admission to the bar. Two states, New York and California, will demonstrate the requirements needed for admission to the bar in the United States.

History

Compared to other countries, the United States is a new country. However, Boston and New York are over three hundred years old, and the U.S. Constitution is one of the world's oldest "living" organic laws.²⁰¹ Today, American legal education generally takes three years for most full time students. In 1850, however, the standard course in many law schools ran for

198. EuRAG § 21(1), (2).

199. EuRAG § 21(4).

200. Henry H. Perritt, Jr., *The Internet is Changing International Law*, 73 CHI.-KENT L. REV. 997, 1022 (1998).

201. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 19 (1985).

one year.²⁰² The coursework later developed into two-year programs. The three-year program, an L.L.B., was a late innovation started at Harvard University.²⁰³ Prominent judges and lawyers constituted the faculty at the majority of the schools.²⁰⁴ In 1908, the American Bar Association adopted a canon of professional ethics.²⁰⁵

Governing Law

The requirements for admission to practice in California are set forth in the State Bar of California Rules Regulating Admission to Practice Law in California.²⁰⁶ In New York State, the requirements are listed in the Rules of the Court of Appeals for the Admission of Attorneys and Counselors of Law Part 520.²⁰⁷

Education

In California, every applicant has the burden of establishing that he or she has met the following legal education requirement:

- (a) Graduated from a law school approved by the American Bar Association or accredited by the Committee of Bar Examiners; or
- (b) Studied law diligently and in good faith for at least three years in any of the following manners:
 - (1) In a law school that is authorized by the State of California to confer professional degrees; is registered with the committee; and which requires classroom attendance of its students for a minimum of 270 hours a year; or
 - (2) In a law office in California and under the personal supervision of a member of the State Bar of California who is, and who has been continuously, an active member of the State Bar of California for at least the last past five years; or

202. *Id.* at 609.

203. *Id.*

204. *Id.*

205. *Id.* at 690.

206. CAL. CODE REGS. tit. 3, § 2 (2004); California Rules of Court, tit. Three, D. II, Rules Relating to Attorney Admission and Disciplinary Proceedings and Review of State Bar Proceedings.

207. N.Y. JUR 2D CT. APP. R § 520; Rules, Court of Appeals, § 520, Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law [hereinafter Admission Rules].

- (3) In the chambers and under the personal supervision of a judge of a court of record of this State; or
- (4) By instruction in law from a correspondence law school requiring 864 hours of preparation and study per year and which is registered with the committee; or
- (5) By any combination of the methods referred to in this subsection.²⁰⁸

New York has similar requirements, however, the applicant without a degree must successfully complete at least one academic year as a matriculated student in a full-time program or the equivalent in a part-time program at an approved law school and at the conclusion be eligible to continue in that school's degree program.²⁰⁹

Practical Training

There is no additional training required in California or New York other than that listed above for those substituting supervised legal training directly for education at a law school.²¹⁰ While many newly admitted attorneys may undergo some tutoring on the job, most, especially in larger law firms, are expected to "hit the ground running." This is in contrast to the carefully supervised English training contract and the two-year German state-supervised trainee rotations.

Examination

The bar examination is the major hurdle for most attorney candidates. New York and California are generally known to have the most difficult bar exams in the United States because of the amount of legal material that is tested and lower bar passage rates. The bar passage rate in California was 49.4% in July 2003,²¹¹ in New York it was 69.4%.²¹²

The New York examination is given over two days and is divided into two sections.²¹³ The first day tests primarily New York state law and is pre-

208. CAL. CODE REGS. tit. 3, § 2 (2004).

209. N.Y. JUR 2D CT. APP. R § 520.

210. N.Y. JUR 2D CT. APP. R § 520.

211. State Bar Announces Results for July 2003 California Bar Examination, State Bar of California News Release, available at <http://www/calbar.ca.gov/state/calbar> (last visited Mar. 29, 2004).

212. NYS Bar Exam Results, July 2003, at http://www.law.com/special/students/ny_barexam/index.shtml. (last visited Mar. 28, 2004).

213. The Bar Examination, New York State Board of Law Examiners, available at <http://www.nysba.org/Template.cfm?Section=FAQ> (last visited Mar. 29, 2004).

pared by the New York Board of Bar Examiners with one portion, the Multistate Performance Test (MPT), developed by the National Conference of Bar Examiners. The New York section is divided into two sessions. The morning session is three hours and fifteen minutes and includes three essay questions and fifty multiple-choice questions.²¹⁴ The afternoon session is three hours and includes two essay questions and the MPT.²¹⁵ The exam tests numerous areas of law that includes Contracts, Constitutional Law, Criminal Law, Evidence, Real Property, and Torts (including statutory no-fault insurance provisions).²¹⁶ In addition, the questions may deal with Business Relationships, Conflict of Laws, New York Constitutional Law, Criminal Procedure, Family Law, Remedies, New York and Federal Civil Jurisdiction and Procedure, Professional Responsibility, Trusts, Wills and Estates including Estate Taxation, and Uniform Commercial Code Articles 2, 3, and 9.²¹⁷

The MPT is a ninety-minute essay, which requires applicants to write an answer to a problem posed by a "supervising attorney."²¹⁸ The applicant is provided with a "file" and a "library" which contains relevant cases, statutes, and regulations.²¹⁹ The applicant may be asked to write a memorandum, a brief, a complaint, or other legal document.²²⁰ The second day of testing is dedicated to the Multistate Bar Examination (MBE). The MBE portion consists of 200 multiple-choice questions prepared by the National Conference of Bar Examiners.²²¹ Of the 200 questions, there are thirty-four in Contracts and thirty-four in Torts.²²² There are thirty-three in each of the following areas including Constitutional Law, Criminal Law, Evidence and Real Property.²²³ Each question consists of a statement of facts followed by four stated alternative answers, and the applicant is required to choose the best of the stated alternatives.²²⁴ Almost all states require the MBE.²²⁵

The California Bar Exam is a three-day exam. On days one and three, the exam's morning session consists of essay exams (three essay questions in each session) and an afternoon session testing performance skills (one

214. *Id.*

215. *Id.*

216. *Id.*

217. N.Y. BD. OF LAW EXAMIN'RS, CH. 1, PT. 6000 RULES, § 6000.6 EXAMINATION (amended Jan. 2003; effective Feb. 1, 2003).

218. Multistate Performance Test (MPT), <http://www.nybarexam.org/MPT.htm> (last visited Mar. 29, 2004).

219. *Id.*

220. *Id.*

221. Multistate Tests, National Conference of Bar Examiners website, at <http://www.ncbex.org/tests.htm> (last visited Mar. 29, 2004).

222. *Id.*

223. *Id.*

224. National Conference of Bar Examiners, The MBE: Multistate Bar Examination 2003 Information Booklet 2-3 (2003).

225. Multistate Tests, Multistate Examination Use, National Conference of Bar Examiners, at <http://www.ncbex.org/tests.htm> (last visited Mar. 29, 2004).

performance test problem in each session). On the second day, applicants take the MBE. The subjects tested in California include MBE subjects and Civil Procedure, Corporations, Community Property, Professional Responsibility, Remedies, Trusts, and Wills and Succession.

California uses its own performance test, not the MPT. The performance section consists of "closed universe" practical problems using instructions, factual data, cases, statutes, and other reference material supplied by examiners.²²⁶ This examination is intended to test analysis and drafting skills of attorneys.

In the United States, many states allow for reciprocity, allowing attorneys who have passed the bar exam in another state to "waive in." New York State permits admission on motion, without examination, for applicants who have practiced for five of the preceding seven years, are admitted to practice in at least one reciprocal jurisdiction, and have graduated from an American Bar Association approved law school.²²⁷

Finally, the last exam usually taken while candidates are in law school is the Multistate Professional Responsibility Exam (MPRE), which is required in most jurisdictions.²²⁸ The MPRE is assembled and administered by ACT, Inc., on behalf of the National Conference of Bar Examiners. The examination is administered three times per year at established test centers across the country.²²⁹ This exam consists of fifty multiple-choice questions and is two hours and five minutes in length.²³⁰

The MPRE looks at the conduct of lawyers in certain roles that are applied in disciplinary and bar admission procedures; by courts in dealing with issues of appearance, representation, privilege, disqualification, contempt or other censure; in lawsuits seeking to establish liability for malpractice; and other civil or criminal wrongs committed by a lawyer while acting in a professional capacity.²³¹ It does not attempt to test the personal ethics of the candidate.

Moral Character

California and New York both require that every applicant be of good moral character. The term "good moral character" includes qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation,

226. There is also now a Multistate Performance Test. See National Conference of Bar Examiners, *The MPT: Multistate Performance Test 2003 Information Booklet 1-2* (2003).

227. Admission Rules, *supra* note 207, at § 520, Subch. B, Rule 520.10(a).

228. National Conference of Bar Examiners, *The MPRE: Multistate Professional Responsibility Examination 2003 Information Booklet 2* (2003).

229. *Id.* at 3.

230. *Id.* at 4.

231. *Id.* at 3.

and respect for the rights of others and for the judicial process. The applicant has the burden of establishing that they are of good moral character.²³² New York's standards are outlined in the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, Section 520.12, Proof of Moral Character.²³³

As a practical matter, candidates for both California and New York must fill in detailed forms outlining their employment history, residences, and criminal records (if any). Former employers and other references are required to fill out recommendation forms for candidates.

Foreign Attorney

Foreigners are allowed to take the New York State bar exam; however, the Board must evaluate his or her legal education according to the New York State Board of Law Examiners. In order to consider a foreign educated applicant eligible to take the bar examination under section 520.6, the Board must determine that the applicant's first degree in law was based on a period of study which is (1) the duration equivalent and (2) the substantial equivalent of the legal education obtained at an approved law school in the United States.²³⁴ The California rules governing foreign attorneys are similar to New York and fall under Rule 988 of the California Rules of Court.²³⁵

In addition to the requirements discussed, many law schools in the United States offer graduate law degrees known as the Master of Laws or LL.M. This additional training is not required but may often increase the worth of an attorney. Depending on the state, obtaining the LL.M. may also qualify foreign attorneys to sit for the bar exam.

Summary

Usually U.S. bar candidates are required to obtain a degree from a law school accredited by the American Bar Association. This legal education requirement does not mandate a practical training component. Once bar candidates have also passed a state bar examination, they are licensed to practice law in that state. The bar examination usually consists of a multiple-choice exam given throughout the United States along with an essay portion given by the relevant state. A professional responsibility exam is also required. Some states also require a simulated practice exam, and this number is likely to increase. There are various avenues for foreign attorneys to qualify to practice in the United States.

232. CAL. CODE REGS. tit. 3, § 2 (1996).

233. N.Y. JUR 2D CT. APP. R § 520.12.

234. *Id.*

235. CAL. CODE REGS. tit. 3, § 2 (1996).

What is curiously lacking in the bar admission process in the United States is a practical training requirement in either law school or afterwards. The careful supervision, for example, required in England and Germany is not present in the United States. A law graduate who has passed a state bar examination may "hang up their shingle" with no prior experience working for another attorney. This causes this author to surmise that there are not "too many" lawyers in America, but that there may be too many *inexperienced* attorneys, who practice without adequate supervision.

CONCLUSION

This article has surveyed admissions requirements in four countries. All four countries have rich historical traditions. China has had the most sweeping changes in recent years. All of the countries require some state or national standards to practice law. Germany and China have more extensive state control over the lawyer admission process. Combined education and training requirements range from five to seven years after the secondary school level.

All four countries allow for law candidates to receive either formal legal education or its practical equivalent. Curiously, only the United States seems not to require jurisprudence and legal history in its mandatory curriculum. Also, only the United States offers legal education as a post-baccalaureate program.

Three of the four countries require at a minimum a one-year training or internship period. Germany and England (for solicitors) require two years. The United States does not mandate a training period either during or after law school, or after passage of the state bar exam. Law students in the United States generally try to gain some legal experience over their summer breaks; however, this is not mandatory and is not regulated by the states or the local bar associations. All four countries require that applicants be of good moral character. The definition of this varies; however, all of the countries can refuse a candidate the ability to practice law for moral reasons or defects in character such as criminal convictions.

All four countries have rigorous entrance examinations, although in England this can be avoided by obtaining a law degree. China's new State Judicial Exam had a pass rate of only 7% in 2002. In three of the countries, England, the United States, and Germany, students often use commercial "cram courses" to bridge the gap between their university training and the examination process. It will be interesting to see if China develops this industry.

Germany has an oral exam in addition to its written exams. In England, it is expected that the applicant practice and learn communication skills. In the United States, students can sharpen their oral skills during law school; however, that is somewhat dependent on the student and his or her choice of classes. Germany, England, and the United States are requiring more testing

in practical skills. In the United States, the use of the Multistate Performance Test is increasing. Only the United States requires a separate exam for professional ethics.

Foreign attorneys are eligible to practice in the United States, but not in China. Germany and England allow lawyers from the European Union to practice. China may want to consider more how it may preserve its traditional preference for alternative dispute resolution. England and Germany have unique opportunities as the influence of the European Union grows. The United States may want to consider requiring jurisprudence and legal history in its curriculum and how more attorneys can be supervised and trained before they are "unleashed" on the public.

Finally, while all four countries are responding to globalization, relatively few steps have been taken to require training for international or foreign law. The time is ripe for a global dialogue on licensing requirements. There is much to be gained from learning from other countries' experiences.