

ASSESSMENT OF THE LEGAL EDUCATION CURRICULUM IN THE MALDIVES

Final Report

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List of acronyms used

ABA – American Bar Association

ADB – Asian Development Bank

AIBE – All India Bar Examination

ALTC – Australian Learning and Teaching Council (for Higher Education)

AGO – Attorney General’s Office

BCM – Bar Council of the Republic of the Maldives

BSL – Bachelor of Shariah and Law (degree)

DJA – Department of Judicial Administration

HEI – higher education institution

IUM – the Islamic University of the Maldives

LETR – Legal Education and Training Review (England and Wales, 2011-13)

LLB – Bachelor of Laws (degree)

MCHE – Maldives College of Higher Education (former identity of MNU)

MNU – the Maldives National University

MNQF – Maldives National Qualification Framework

MQA – Maldives Qualification Authority

MSBE – Multi-state Bar Examination (US)

NLH – notional learning hours/hours of study

PGO – Prosecutor General’s Office

QA – quality assurance

QAA – Quality Assurance Agency for Higher Education (UK)

SCLET – Standing Committee on Legal Education and Training (Hong Kong)

SQE – Solicitors’ Qualifying Examination (England and Wales)

SRA – Solicitors Regulation Authority (England and Wales)

UNDP – United Nations Development Programme

WG – National Curriculum Working Group (Maldives – this project)

1. Introduction

1.1 Terms of Reference

The project TORs were defined in terms of the following plan of work as agreed by the Maldives Bar Council and the United Nations Development Programme (UNDP):

Under the guidance of the Bar Council and UNDP, the consultant will lead the process of reviewing the legal education curriculums in use in the Maldives. The tasks to be undertaken by the consultant under the Terms of Reference include, but are not necessarily limited to, the following:

- **Home Based (10 days):**
 - 1) Conduct a desk review of existing legal education curriculums and submit an inception report outlining recommendations in line with international norms, standards and best practices;
 - 2) Review relevant assessments and follow up on their recommendations.
- **In Country (15 days):**
 - 1) Organize and conduct consultation meetings with relevant stakeholders including but not limited to relevant government institutions, judiciary, lawyers, academia and civil society organizations to better understand the current challenges and feasibility of recommendations;
- **Home Based (30 days)**
 - 1) Based on the review of suggested policy directives from the Bar Council and key stakeholders and based on the inception report, submit a comprehensive assessment on the curriculum proposing recommendations and outlining possible constraints and possible actions.
 - 2) Submit the Final assessment reflecting the comments of the Bar Council and UNDP.
 - 3) Based on international models and good practices submit a model curriculum for the Bar Councils consideration.

1.2 Project context

Following presidential elections in the Maldives in September 2018, and parliamentary elections in April 2019, the government has been moving forward its agenda with plans to reform the judiciary and strengthen the legal sector. As part of this programme, a Legal Profession Act (Law No: 5/2019) was enacted in June 2019 creating an independent Bar Council for the first time to regulate the legal field.

The Act, discussed in more detail below, mandates the Bar Council to draft regulations to govern all matters relating to the legal profession in the Maldives, including the issuing of legal licenses, regulating

lawyers through a code of conduct, investigating and taking any necessary disciplinary action against lawyers, improving the quality of legal education, including providing additional vocational training for lawyers, ensuring the public has access to legal aid and representation, and otherwise endeavouring to develop the legal field in the Maldives.

Reviewing the curriculum of academic legal education taught in the Maldives and standardising it has been identified as a key objective by the Bar Council and the law fraternity. Currently, there are more than 1400 registered lawyers in the Maldives, the majority of whom obtained law degrees from programmes offered in the Maldives.¹ Consequently, strengthening legal education is seen as key to improving the quality of legal services and of legal and justice sector institutions.

The UNDP has been a key partner in justice sector reform and strengthening of the legislative framework efforts of successive Governments. To ensure sustainable reforms to the criminal justice system, UNDP has, in the last five years supported the rollout of the new Penal Code and the Criminal Procedure Code. UNDP has also worked with the Maldives National University to strengthen legal education through the introduction of clinical legal education into its current law curriculum.² In view of the existing challenges and needs, UNDP under its Integrated Governance Programme (IGP) has, in collaboration with the Bar Council of the Maldives (BCM, 'Bar Council'), appointed an international consultant to review the existing legal education curricula taught by universities and colleges in the Maldives.

1.3 The Maldives' legal system

The issues facing the Maldivian legal education system need to be understood in the context of the legal system more generally. The Maldives is a plural or mixed system, drawing on both a long-standing Islamic tradition, and more recent common law influences. Despite (or perhaps more accurately because of) being a British protectorate from 1887 to 1965, the Maldives did not develop a system of centralised legal administration in the colonial era. Following independence, much work thus remained to be done to modernise the justice system so as to meet international norms. Neither civil nor criminal courts had codified their procedures, resulting in prolonged trials, uncertainty and injustice, particularly in criminal proceedings where there was extensive reliance on, often unfairly obtained, confession evidence. As recently as 2014, the UNDP Baseline Study³ has highlighted continuing procedural and access to justice problems, including issues of cost and delay in accessing the civil courts, and inadequate procedures for enforcement of judgments. Access to lawyers was also identified as problematic. There was virtually no legal profession in the Maldives before the 1990s. There has also been no system of legal aid. Lawyers' fees were (and remain) unaffordable for the majority of people,

¹ Leigh Toomey et al, 'Legal and Justice Sector Baseline Study 2014' (AGO/UNDP Maldives, 2015), http://agoffice.gov.mv/v4/wp-content/uploads/2015/08/legal_and_justice_sector_baseline_study_WEB_FINAL_1.pdf

² See Mariam Jabyn and Rogena Sterling, 'Better Lawyers, Better Justice: Introducing Clinical Legal Education in the Maldives' in Shuvro Prosun Sarkar (ed) *Clinical Legal Education in Asia* (Palgrave Macmillan, 2015).

³ Above (n.1)

and the fact that the great majority of lawyers were (and still are) based in Male' adds to the cost and inconvenience of seeking professional legal advice.

Substantial reforms to the court system were made following the introduction of the 2008 Constitution. The powers and jurisdiction of the Supreme and High Court were established under Chapter 7 of the Constitution, while the network of subordinate courts across the archipelago was reformed by the Judicature Act 2010. The latter courts exercise jurisdiction chiefly over routine criminal, family, and property matters, while commercial and corporate case are, for the most part, dealt with by the Male' Superior Courts. Procedural rules across the courts, but particularly within the superior courts, have been strengthened, based primarily on common law models. A new Criminal Procedure Code was passed into law in 2016, and a draft Civil Procedure Code is currently under active consideration. Common law is also substantively important, with much of commercial and (to an extent) property law restructured in the 1990s, essentially to provide reassurance to inward investors in the country's expanding tourism industry. For example, new contract and corporations laws were both introduced in this period, largely along common law lines. Other codifications of law – such as the new Penal Code of 2015 - have sought to integrate both common law and Shariah principles into a unified source of Maldivian law.⁴ Strikingly, given the reforms to procedural law, the law of evidence as such is yet to be codified.

The extent to which Shariah law apparently plays a limited role in the day-to-day conduct of the formal legal system is a point that has been observed in earlier enquiries.⁵ Such observation has some basis in practice, but also risks overlooking the deeper significance of Shariah to the Maldivian legal system. Historically, the Maldivian system is largely Islamic in origin (with some adaptations of customary law). It is on this grounding that common law has been overlaid. Substantively, of course, Islamic law continues to play an important role in criminal and personal law (particularly family and succession) matters, as well as in banking and financial services. But the influence of Islamic law on the system is more than the sum of these parts. Legally the Maldives has established itself as a constitutional democracy, so that the constitution serves as the primary source of law. At the same time, the Constitution can be seen as expressly enacting a system of distinctively Islamic constitutionalism.⁶ Not only is the constitution itself Shariah compliant, Islamic law is positioned by the Constitution so as to provide the underpinning values and principles of the system. Consequently, common law will only be adopted insofar as it is not contradictory of Shariah principles;⁷ legislation made by the People's Majlis should be "not inconsistent" with the tenets of Islam,⁸ while the courts more generally "must consider" Shariah when filling-in and interpreting gaps in existing Maldivian law.⁹ This foundational role for Islam cannot be overlooked when it comes to curriculum design.

⁴ See also the Family Law Act 2001 which represents a codification of Shariah in express terms. Sometimes codification will be by a process of reference to or 'reading in' of Shariah law rather than by detailed codification: see, eg, the definition of 'sexual contact' in s.131(b) of the new Penal Code.

⁵ Strengthening the Maldivian Judicial System <http://www.mvlaw.gov.mv/pdf/publications/9.pdf>

⁶ L Ali Khan and Hisham M Ramadan, *Contemporary Ijtihad* (Edinburgh University Press, 2011), ch. 4; Ahmad S Moussalli, *The Islamic Quest for Democracy, Pluralism and Human Rights* (University Press of Florida, 2001).

⁷ See Art. 10(b), Constitution of the Maldives 2008

⁸ Art. 70(b) of the Constitution

⁹ Art. 142 of the Constitution

1.4 The system of legal education

In terms of legal education, the Maldivian system is still a young and developing system. The first formal training course for lawyers was launched by the (then) Institute of Islamic Studies (IIS) in 1988. Entitled the *Muhaamee* (lawyers) course, it was open to anyone who had completed grade seven of high school, or an equivalent examination offered by the Ministry of Education. Although it was a two-year Diploma, it comprised only about a year of legal studies and so provided a fairly basic education in Islamic law. The *Muhaamee* course subsequently evolved into first (in 1995) a three-year Diploma and subsequently an Advanced Diploma in Shariah and Law, designed to train both judges and lawyers.¹⁰

Notwithstanding this development, as the Maldives developed into a more developed economy, there remained an acute shortage of appropriately trained lawyers. In 1998, it was reported that there were some 70 legal practitioners (of whom only three were female) registered with the Ministry of Justice.¹¹ Moreover, home-educated lawyers lacked training in the modern areas of commercial and regulatory law necessary to support the country's economic expansion. Less than a third of practitioners had a law degree from outside the jurisdiction, and declining development assistance meant that fewer opportunities were arising for students to study overseas. Consequently, the government and a number of senior practitioners led the push to develop a national law school. With the support of a technical assistance grant from the Asian Development Bank (ADB),¹² an Institute of Shari'ah and Law was established at the (then) Maldives College of Higher Education (MCHE). The school initially offered a range of Certificate and Diploma courses in Law, and in Justice Studies (for judges). In 2001, the renamed Faculty of Shariah and Law at MCHE, launched an Advanced Diploma in Shariah and Law, which was equivalent to the first two years of a law degree. A third year was added to this programme in 2004, making it the first full law degree to be offered in the Maldives. In 2011 the MCHE was renamed as the Maldives National University. This development was followed, in 2006, by a further upgrading of the Advanced Diploma course at IIS to a full law degree (Bachelor of Shariah and Law – BSL). In 2015 the IIS was re-established as the Islamic University of the Maldives (IUM).

Early plans to amalgamate the two public law faculties did not come to fruition. Since then the legal education sector has, in fact, further diversified and expanded with the development of law degrees at a small group of private colleges, namely Avid, Mandhu, and Villa Colleges.¹³

These developments have had a profound impact on the Maldivian system, including the profession. Whilst this project was unable to establish a precise figure for the number of law graduates, estimates suggested that the total number of students studying law is now likely in excess of 400, albeit with a smaller number than that graduating each year. Not surprisingly, it is also estimated that the number of

¹⁰ A separate judicial training course, focussing exclusively on Shariah law, had been established in the late 1960s by the Ministry of Justice. The Diploma was constructed out of a fusion of this and the lawyers' course: Jaby and Sterling, above (n.2), 18.

¹¹ Asian Development Bank, 'Technical Assistance to the Republic of the Maldives to Strengthen Legal Education and Judicial Training' (ADB, December 1999), <https://www.adb.org/sites/default/files/project-document/71936/32270-mld-tar.pdf>

¹² Id.

¹³ For brevity, these, together with the two established universities are collectively referred to in this report as the Maldivian 'higher education institutions' (HEIs) or (where the context permits) 'law schools'.

lawyers has effectively doubled since 2007. Whilst a continued lack of entry regulations has permitted a minority of graduates who have undertaken first degrees in overseas jurisdictions to enter practice,¹⁴ the majority of practising lawyers having been educated via 'local' programmes offered by the former Ministry of Justice, the Islamic University of the Maldives and the Maldives National University. The rapid expansion also highlights two new demographic trends: a significant reduction in the age profile of the profession, and diversification in terms of gender. As in many jurisdictions, the majority of students now entering law degrees are women, however the point has also been made in discussions that the attrition rates for female lawyers remain high in the Maldives, with many seemingly leaving the profession to focus on family obligations.

1.5 The regulatory context

A law degree performs multiple functions. It is, first and foremost, an academic education in and about law that introduces students to the core sources, concepts, methods, theories and epistemologies of the discipline in a manner consistent with the norms of academic practice in higher education. It is frequently a *de facto* first step to a career in law (which may include legal careers within and beyond those under regulated professional titles). It is also frequently a mandatory requirement for those who wish to practice as a lawyer under a regulated title. In this latter context it may constitute either an initial stage of training, or, as has been the system in the Maldives, the sole mandatory requirement.

These different functions are material in considering the role and proper scope of regulation. HEIs will be aware of and may seek to design programmes that meet a multiplicity of aims and functions. Normal degree accreditation will evaluate programmes against their stated objectives, and in accordance with the norms and standards expected of a tertiary level academic award. *Professional* standards and accreditation, however, have a narrower concern: to assure that law graduates have the necessary attributes of **competence** to progress to the next stage of professional formation, which may be either a professional legal training course, or entry into practice.

1.5.1 The Bar Council's regulatory function and powers

The new Legal Profession Act of 2019 defines in s.7 the following 'responsibilities' of the Bar Council with respect to legal education and training:

- (s) Formulating regulations on admissions criteria, syllabi, curricula, and duration of courses developed at higher education institutes providing legal education;

¹⁴ Principally Malaysia, Britain, Australia and India, but also from some civil law or Islamic jurisdictions. Students based in the Maldives may also graduate with a UK law degree by studying via the London University International Programme (the 'London External' degree) or for an LLB validated by the University of the West of England, taught at Villa College. Though numbers are not available, it is evident from consultations that a number of practising lawyers have also studied for a higher degree (generally LLM), and/or qualified as a lawyer overseas before entering practice in the Maldives.

- (t) Monitoring and evaluating the quality of teaching at higher education institutes providing courses on law, and if necessary, informing academic institutions where improvement is required;
- (u) If necessary, taking action and assessing the examinations at higher education institutions in the Maldives providing courses on legal education;
- (v) Declaring academic institutions and training centres that are approved by the Bar Council in relation to acquiring license to practice law in the Maldives;

The scope of a number of these responsibilities is material to this project, and its recommendations, and these provisions are referred to at a number of points in this and the final report.

In addition to the above provisions the Act requires, under s.30(a)(4) and s.31 that applicants for a license to practice law in the Maldives must first complete a Bar Examination, to be devised by the Bar Council under s.32. It is understood that the Bar Council's current thinking is to create a specific preparatory course, though few details beyond that have yet been worked out. Ideally the academic curriculum review and the Bar Examination would form part of the same design process, but that is not what the timetable set down by legislation allows. In the light of this, a number of preliminary observations and recommendations are made in this report with respect to the possible form, function and scope of any Bar Examination.

The Bar Council gazetted regulations for issuing licenses for legal practice and public notary services in October 2019. These follow the framework of conditions laid down by s.30 of the Legal Profession Act. Until work on the degree curriculum is finalised, programmes accredited by the Maldives Qualification Authority are to be accepted as a qualifying first degree for purposes of the Act and Regulations. The regulations also make provision for a period of workplace supervised training, to be completed before a licence to practice is granted. Whether law firms actually have the skills and capacity at present to provide meaningful supervision, particularly at the scale required is also a concern raised by consultees, though it is a matter that, again, falls outside the proper remit of this project.

1.5.2 Other oversight of higher (legal) education awards

Degrees are also subject to validation and approval at institutional level, usually in accordance with standards and processes consistent with national higher education qualification frameworks and quality assurance processes. The Maldives is no exception. A national qualification framework (MNQF) has been established and domestic degrees are accredited, at exit level 7 (Bachelors) by the Maldives Qualification Authority. The descriptor for level 7 states:

A Bachelor's Degree is a systematic, research-based, coherent, introduction to the knowledge, ideas, principles, concepts, key research methods and to the analytical and problem-solving techniques of a recognised major subject or subjects. A programme leading to this qualification usually involves major studies in which significant knowledge is available. Programme content is taken to a significant depth and progressively developed to

a high level, which can provide a basis for post-graduate study and professional careers.¹⁵

Such standards have been significant internationally in formalising quality monitoring and assurance processes in higher education, benchmarking awards nationally, and to some extent internationally, and, some would argue, instrumental in moving universities towards an ethos of continuous improvement and quality enhancement. It is perhaps a mark of the value of MNQF accreditation that it has been adopted as the interim benchmark for the recognition of Maldivian BSL degrees for professional licensing purposes whilst the Bar Council's curriculum study is underway.

On the other hand, such accreditation systems have their limits. MQA accreditation is undertaken 'on the papers' and relies (as do most system-wide accreditation schemes) largely on HEIs' internal quality assurance (QA) mechanisms to maintain standards. Approval currently is not time limited; the MQA does not receive and review all subject syllabi, and there is no national discipline benchmark standard comparable (eg) to the UK Quality Assurance Agency's Law Benchmark¹⁶, or the Australian Threshold Learning Outcomes for law degrees.¹⁷ To this extent, some separate process for ensuring *professional* standards and recognition has its place.

MQA oversight should not, moreover, in and of itself act as a constraint on the regulation of professional standards, and indeed, in the context of this project, the MQA has welcomed the Bar Council's involvement, subject to certain proper clarification of the two bodies' respective responsibilities. It is widely accepted international practice that professional and statutory regulatory bodies are entitled (and indeed in public protection terms, required) to assure themselves that qualifying awards are fit for professional purposes, but this process of professional *approval* is, however, a separate and distinct function from the more general *accreditation* of academic programmes and standards, and this does need to be properly reflected in the responsibilities and working arrangements between the MQA and the Bar Council.¹⁸

It should also be recognised that the extent to which law schools are subject to broader university accountability and QA mechanisms can also create its own challenges. Law schools may lack autonomy in their capacity to institute curriculum change and may sometimes have significant structural change foisted upon them by the parent institution, particularly where those decisions involve resources.¹⁹ In these contexts, appropriate professional regulation can actively support the law school (and the

¹⁵ Maldives National Qualification Framework, v.2.2, para 2.4, online at http://mqa.gov.mv/static/uploads/Maldives-National-Qualifications-Framework-V2_2-witheffectfrom01stJan2017_2018-06-26T00-49-48.pdf

¹⁶ Available at https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16

¹⁷ Australian Learning and Teaching Council, *Bachelor of Laws: Learning and Teaching Academic Standards Statement* (ALTC, 2010).

¹⁸ See further recommendation 1 in this report.

¹⁹ See, eg, the findings discussed in Australian Learning and Teaching Council (ALTC), *Highlights of AUTC's Outcomes and Curriculum Development in Law Report* (ALTC, July 2009) online at https://cald.asn.au/wp-content/uploads/2017/11/AUTC-Highlights-of-AUTCs-Learning-Outcomes-and-Curriculum-Development-in-Law-Report_altc_summary_comb1.pdf

profession) in resisting undesirable change, or in ensuring a more adequate share of resource, at least in relative terms.

2. Programme of work

Table 2.1 identifies the planned outputs (deliverables) of the project, together with initial target deadlines, the agreed timeline for completion and actual completion dates.

#	Deliverables	Draft Submission (proposed)	Final Submission (proposed)	Agreed Dates	Completed
1	Inception Report: The inception report shall include a summary of curriculums reviewed, proposed recommendations, and possible constraints with regard to the proposed changes. (10 Days)	08/12/19	15/12/19	Draft due 15/12/19	18/12/19
2	Consultations: Conduct consultation meetings with relevant stakeholders to learn about on-the-ground practices including the challenges in implementation and monitoring and to discuss possible actions to overcome these challenges. (15 Days)	25/12/19	25/12/19	-	25/12/19
3	Final Assessment Report: Detailed review of the curriculums, proposed recommendations, constraints with regard to delivery, and proposed actions to overcome the constraints identified. (10 Days)	06/01/20	14/01/20	Draft due: 25/01/20 Final due: 05/02/20	Draft: 28/01/20 ²⁰ Final: On track
4	Model Curriculum: Based on international models and good practices submit a model curriculum for the Bar Councils consideration. (20 Days)	22/01/20	05/02/20	Draft due: 15/01/20 ²¹ Final due: 05/02/20	Draft: 16/01/20 Final: On track

Table 2.1: Programme of work

²⁰ A delay to submission was agreed on the basis that no responses to the draft Model Curriculum had been received from stakeholders by the due date of 23/01/20. A response from the Bar Council ExCo was received on 26/01/20. The Model Curriculum was subsequently revised in the light of that response – see Annex 3.

²¹ In the light of the time pressures on the Bar Council it was agreed to reverse the sequence of submitting the draft curricula and the final assessment report.

2.1 Activities undertaken

Below (Table 2.2) are the activities undertaken up until 5th February 2020, when this final report was submitted, set against the TORs. The specific activities undertaken in respect of each TOR are identified in more detail in column two, while column three identifies those tasks that were completed as well as planned activities that were not completed, or were not in fact capable of full completion.

TOR	Specific tasks	Completion	TOR status (at 25/01)
<p>Phase 1</p> <p>Conduct a desk review of existing legal education curriculums and submit an inception report outlining recommendations in line with international norms, standards and best practices;</p> <p>Review relevant assessments and follow up on their recommendations.</p>	<ul style="list-style-type: none"> • Evaluate regulatory context (LPA) • Identify existing law degree programs and their structure • Review existing curricula from Maldives law schools • Identify and review comparator systems • Desk research on the Maldivian system • Desk research on teaching Islamic law • Desk research on best practices in curriculum design • Draft inception report • Amend inception report and submit 	<ul style="list-style-type: none"> • Complete • Complete • Completed for 4 out of 5 law schools • Complete²² • Complete • Complete • Complete • Complete (in Phase 2) • Complete (in Phase 2/3) 	<p>Complete</p>

²² Malaysia and Indonesia were identified as ‘local’ and relevant mixed legal system comparators – see below. In fact, these were of limited assistance, as most detailed teaching structures/curriculums were hidden behind institutional paywalls, though some secondary literature was useful. A wider pool of comparators was drawn on in considering trends and developments in curriculum design, and current regulatory practices in predominantly common law/mixed systems, including Australia, New Zealand, Pakistan, the UK (England and Scotland) and the USA. Extensive reading was also undertaken with respect to Islamic jurisprudence and principles of Shariah – see bibliography.

TOR	Specific tasks	Progress	TOR status
<p>Phase 2</p> <p>Organize and conduct consultation meetings with relevant stakeholders including but not limited to relevant government institutions, judiciary, lawyers, academia and civil society organizations to better understand the current challenges and feasibility of recommendations</p>	<ul style="list-style-type: none"> • Complete work on inception report • Undertake agreed stakeholder meetings • Commence drafting curriculum standards 	<ul style="list-style-type: none"> • Complete (draft report accepted) • Complete²³ • Commenced in Phase 2, completed in Phase 3 	Complete
<p>Phase 3</p> <p>Based on the review of suggested policy directives from the Bar Council and key stakeholders and based on the inception report, submit a comprehensive assessment on the curriculum proposing recommendations and outlining possible constraints and possible actions.</p> <p>Submit the Final assessment reflecting the comments of the Bar Council and UNDP</p> <p>Based on international models and good practices submit a model curriculum for the Bar Council's consideration</p>	<ul style="list-style-type: none"> • Draft report based on inception report, phase 1 and 2 desk research and consultations • Revise report as required • Draft curricula and standards for agreed compulsory subjects/areas of study 	<ul style="list-style-type: none"> • Complete • Complete • Initial draft submitted 16/12/19 • Revised final 05/02/20 	Complete

Table 2.2: Activities undertaken

²³ See Annex 2 for the final schedule of consultation meetings

2.2 Summary of work completed in-country

In addition to background work of reading and drafting reports, meetings were held with the stakeholders identified in Annex 2. The consultant and the UNDP express their gratitude to all of those involved in the consultation process for their time and contributions.

The stakeholder meetings provided a good cross-section of opinion regarding the history of legal education in the Maldives; the issues facing the law schools and the profession and the proper scope of curriculum reform. It should be noted that, notwithstanding the efforts of the Bar Council and UNDP, two groups were under-represented in these meetings: local graduates and current students.

In addition to the stakeholder meetings, a National Curriculum Working Group (WG) was established to provide local advice and information to the consultant to support the work of curriculum design. Representatives of each law schools were invited to participate in the group, though not all were able to participate, or at least to attend all meetings.

Three meetings of the WG took place between 10th December and the end of the in-country phase. Discussion took place around the following issues:

- student numbers and approaches to teaching and learning;
- the regulatory context of the curriculum study;
- concerns in respect of the regulatory reform process
- the scope of the regulated 'qualifying' curriculum
- challenges arising in teaching Maldivian law
- review of draft learning outcomes and specific sample curricula

The meetings were extremely constructive and their outcomes are reflected in section 4 and 5 of this report. The draft learning outcomes and curricula were shared with WG members as part of Phase 3 of the project.

3. The existing curriculum

Work on the curriculum review has drawn primarily on two bodies of data: a comparative study of curricular specifications and standards from other, chiefly common law, jurisdictions, and a review of the law curriculum and subject specifications from the Maldivian system (informed by stakeholder input).

A meta-review of some of the more recent work on law curriculum design and development has been undertaken. Key works reviewed in this process include:²⁴

- Recommendations for the law curriculum made in the following reviews
 - Review of Legal Practitioner Education and Training in Ireland (2018)
 - The Comprehensive Review of Legal Education and Training in Hong Kong (2018)
 - The Legal Education and Training Review (LETR) in England and Wales (2013)
 - Review of Legal Education in Bangladesh (2006)
 - The American Bar Association’s Legal Education Task Force (2014) and *McCrate Report* (1992)
- Competency frameworks, notably
 - Threshold Learning Outcomes (TLOs) for Australian Law Degrees (2010)²⁵
 - The meta-analysis of competence frameworks constructed for the LETR (2013)
 - Day one outcomes and standards developed for the Solicitors Qualifying Examination in England and Wales (2016)
 - Law Admissions Consultative Committee (Australia), Statement of Prescribed Areas of Knowledge (2008) and (2019)
 -
- Other best practice indicators, including
 - Stuckey et al, *Best Practices in Legal Education: A Vision and a Road Map* (2007)
 - Holloran Center (US), Survey of Law School Learning Outcomes (2018)

These sources inform the commentary that follows, and are discussed further in section 5.

3.1 The structure of existing curricula

The existing curricula adopted by the five local legal education providers constitute the primary resource for this study . As noted above, the five HEIs are

- Maldives National University

²⁴ See Annex 1 for full references.

²⁵ These drew in turn on a meta-analysis of a range of then current standards statements from the UK, USA and Canada.

- Islamic University of the Maldives
- Avid College
- Mandhu College
- Villa College

Four out of the five institutions offer a combined degree in Shariah and Law (BSL) of three to four years' duration. Two colleges offer LLB degrees: Mandhu College offers a 'local' LLB with a comparatively limited Islamic law component, while Villa College offers an English qualifying LLB degree, validated by the University of the West of England (UWE), in addition to its BSL programme. Under the current system the Villa/UWE course has also provided students with a pathway into the Maldivian legal profession, however, it contains no components of Islamic Law and is not included in the following comparison for that reason.

Avid College (3 year) – BSL – Module = 10-14 credits

Year 1	Year 2	Year 3
Principles of Law Critical Thinking Research Methods Arabic Language Constitutional Law and Political Systems Usool Al Figh Contract Law Law of Torts Maldivian Legal System	Criminal Law Company Law Figh Al Muamalath Islamic Family Law Islamic Criminal Law Trust and Equity Law Qawaid Al Fighiyya English for Law Public International Law	Legal Practice Employment Law Property Law Administrative Law Civil and Commercial Procedure Law of Evidence Islamic Inheritance Law Criminal Procedure Contemporary Fiqh Dhivehi for Law

Mandhu College (3 year) – LLB – Module = 15 Credits

Year 1	Year 2	Year 3
Constitutional Law I Law of Contract Criminal Law I Common Law I Jurisprudence and Theories of Law Law of Contract II Criminal Law II Common Law II	Land and Property Law I Law of Tort I Law of Evidence I Equity and Trusts Company Law Land and Property Law II Law of Tort II Law of Evidence II	Constitution of the Maldives Islamic Sharia' I Islamic Sharia' II Commercial Law Maldivian Legal System Family Law Taxation Law Protection of Human Rights

IUM (4 year)²⁶ - BSL - Module = 9-17 credits

Year 1	Year 2	Year 3	Year 4
Values and ethics... Academic & Legal Dhivehi Arabic level 1 Maldivian Leg Sys Contract I Tort I Constitutional Law	Critical Thinking Quran level 2 Arabic level 3 Criminal Law I Islamic Criminal Law I Islamic Law of Transactions I Islamic Family Law	Maldivian History and Civilization Quran level 4 Arabic level 5 Principles of Islamic Jurisprudence I Business Law Company Law I Public International Law I	Objectives of Shariah in Isl. Legislative Policy Legal Aspect of Selected Verses & Ahadith Evidence I Land Law I Jurisprudence Islamic Law of Evidence Research Project
Quran level 1 Arabic level 2 History of Islamic Legal System Contract II Tort II Legal Skills & Research Methodology Administrative Law	Islamic View of Know- ledge & Civilization Quran level 3 Arabic level 4 Criminal Law II Islamic Criminal Law II Islamic Law of Transactions II Succession	Alternative Dispute Resolution Arabic level 6 Equity and Trust Principles of Islamic Jurisprudence II Islamic Legal Maxims Company Law II Public International Law II	Civil Procedure Criminal Procedure Evidence II Land Law II Compulsory Moot Professional Practice Law of Islamic Banking & Finance

MNU (4 years) – BSL - Module = 12 credits

Year 1	Year 2	Year 3	Year 4
Arabic Language I Maldivian Legal System Law of Tort I Law of Contract I Islamic Legal System	Arabic Language III Constitutional Law Criminal Law Jurisprudence Principles of Islamic Jurisprudence	Arabic Language V Company Law I Family Law II Islamic Criminal Law I Land Law I	Islamic Commercial Law I Law of Evidence I Islamic Law of Succession [Elective 1]
Arabic Language II Legal Reasoning Law of Tort II Law of Contract II Comparative Figh	Arabic Language IV Administrative Law Criminal Law II Principles of Islamic Jurisprudence II Family Law I	Arabic Language VI Company Law II Islamic Constitutional Law Islamic Criminal Law II Land Law II	Islamic Commercial Law II Law of Evidence II Shari’ah Evidence and Procedure [Elective 2]

²⁶ This listing includes optional subjects as well as compulsory ones.

Villa College (3 year + 1 semester) - BSL – Module = 15 credits

Year 1	Year 2	Year 3 + 1
Exegesis of Ayaat on the Legislature of the Holy Quran Principles of Islamic Jurisprudence I Criminal Law I Contract I Maldivian Legal System Contract II Criminal Law II Islamic Criminal Law	Exegesis on Traditions of Legislature in the Sunnah Tort I Principles of Islamic Jurisprudence II Constitutional Law Administrative Law Islamic Legal Maxims Tort II Company Law	Islamic Jurisprudence (Fiqh) Islamic Family Law Islamic Law of Inheritance Land Law Law of Trust Evidence and Procedure Introduction to Legal Practice (double module)

This overview of programme structures tabled in section three clearly demonstrates that the Maldives model operates on the basis of a relatively crowded and complex curriculum that seeks to build students' competence across both Islamic and common law traditions. This is a challenging task, but not unique, particularly in Asia where many legal systems are plural or mixed, to some degree. But, as a starting point, how does the Maldives compare?

3.2 Variance and similarity in course design

Drawing on a mix of desk research and a 'paper' review of the curricula themselves, this section identifies current curriculum design practices with respect to law degrees, and then focusses specifically on five significant facets of the curriculum in the Maldives: the organisation of 'core' subjects, and the opportunity to undertake electives; training in professional and other skills; the place of language teaching, and the design of the assessment regime.

3.2.1 Setting the context: variance in course structure and breadth vs depth of learning

The move internationally to modularisation of curricula since the early 1990s has changed the structure and organisation of the law curriculum in many jurisdictions. This section offers a brief overview of developments in the three largest common law systems: the UK, Australia and the USA, to provide some benchmarking and illustration of trends, which will be used throughout this section of the report, and to highlight the extent to which there is, ultimately, no single best practice in course structure.

In England, (which, at least in common law terms, is still a benchmark for the Maldivian model), modularisation has led to some significant re-design of the three-year curriculum. To an extent, the

trend has been away from year-long subjects²⁷ towards a semesterised model in which students study four or sometimes five modules or units per semester. Initially, much modularisation was achieved simply by splitting the former year-long subjects in half. However, over time, modularisation, assisted by a relatively liberal regulatory framework, has given the law schools the flexibility to think differently about the curriculum, and to innovate. Some have taken this up as a significant opportunity. The London School of Economics, and the Universities of Kent and Warwick, for example, have used this flexibility quite radically to embed critical and interdisciplinary approaches to law at the heart of their curricula. Others have been less conceptually radical, but have still sought to re-structure the core, creating modules (eg in the law of obligations or property) that cut across traditional divisions (eg) between contract and tort, or land and trusts, to differentiate in the weight attached to different core subjects, and to integrate more explicit skills teaching within the curriculum, either as stand-alone skills modules, or within substantive law subjects, or some combination of the two. The following examples illustrate this variety of approaches.²⁸

(a) City, University of London, UK

Year 1 (credits)	Year 2 (credits)	Year 3 (credits)
Debates in the English Legal System (15) Constitutional Law (15) Foundations of Contract Law (15) Foundations of Criminal Law (15) Foundations of Tort Law (15) Contract Law and Practice (15) Administrative Law and Human Rights (15) Applied Legal Writing and Research (15)	Foundations of EU Law (15) Foundations of Land Law (15) Foundations of Trusts Law (15) + 5 x electives (15)	8 x electives (15)

(b) University of Leeds, UK

Year 1 (credits)	Year 2 (credits)	Year 3 (credits)
Foundations of Law (30) Contract Law (30) Constitutional & Administrative Law (30)	European Union Law (20) Land Law (20) Tort (20) Law and Society (10)	6 x electives (20)

²⁷ Though a not insignificant proportion of law schools, including elite schools such as University College, London and King's College, London have maintained the traditional year-long subject structure.

²⁸ As in the Maldives, a full academic year of study in the UK is normally represented as 120 credits or about 1200 notional learning hours (NLH) (ie the combined load of class contact hours, assessment and personal study).

Criminal Law (30)	Researching Law (10) Elective (20) Elective (20)	
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Leeds reflects an approach taken by a number of schools, that have sought to maintain the classical model of year long subjects (or a semesterised equivalent) at the start of the degree, on the assumption that this provides a depth of foundational knowledge, without too much breadth, before moving into a more flexible, breadth, approach in later years. Within this approach, Leeds (and others) have also moved away from a consistent credit-weighting for all core subjects. City Law School, by contrast, has modularised all its core subjects into consistently smaller units, though still with a relatively conventional grouping of areas of knowledge. Interestingly, City also enables students who wish to go beyond the 'core' to pick-up electives in crime and tort that explore current and topical issues in those subject areas.

By contrast, Nottingham Trent (below) has gone further than many UK law schools in integrating skills and a practice orientation to the degree. Rather than construct stand-alone skills modules, core modules are used to develop both specific areas of knowledge and competence in specific skills. The programme also integrates elements of clinical simulation and live client work into the curriculum. Clinical or other work experience (internship) programmes have become increasingly common in the formal curriculum in UK law schools, though seldom compulsory.

(c) Nottingham Trent University, UK

Year 1 (credits)	Year 2 (credits)	Year 3 (credits)
Law of Contract and Problem Solving (40) Legal and Professional Environment (20) Public Law and Research Skills (20) Law of Torts and Legal Reasoning (20) International, European and Comparative Law and Group Presentation Skills (20)	Criminal Law with Mooting (20) Land Law and Professional Advice (20) Law of Trusts and Advanced Legal Reasoning (20) Applied Legal Knowledge (20) plus two electives (20) OR Applied Legal Knowledge (Legal Advice Centre) (40) plus one elective (20)	Path to Professional Practice, or Law in Practice, or Applied Legal Knowledge (Legal Advice Centre) (20) 5 x electives (20)

Broadly similar patterns of innovation are seen in Australia and the USA. In Australia, although there is a substantial core comprising 11 areas of legal knowledge,²⁹ a relatively light touch regulatory regime has enabled law schools to develop their own variants. The Melbourne JD curriculum illustrates this:

²⁹ The areas of knowledge are defined in regulation as Criminal Law and Procedure; Torts; Contracts; Property; Equity; Company Law; Administrative Law; Federal and State Constitutional Law; Civil Dispute Resolution; Evidence; Ethics and Professional Responsibility: see, eg, Legal Profession Uniform Admission Rules 2015 (NSW & Vic), Schedule 1.

(d) Melbourne Law School, Australia³⁰

Year 1 (credit)	Year 2 (credit)	Year 3 (credit)
Legal Method & Reasoning (foundation subject) (12.5) Obligations (12.5) Principles of Public Law (12.5) Torts (12.5)	Administrative Law (12.5) Evidence & Proof (12.5) Property Law (12.5) Elective (12.5)	Remedies (12.5) Legal Research (project)(12.5) 6 x electives (12.5)
Constitutional Law (12.5) Contracts (12.5) Disputes & Ethics (12.5) Legal Theory (12.5)	Corporations Law (12.5) Criminal Law & Procedure (12.5) Equity & Trusts (12.5) Elective (12.5)	

The Melbourne model takes core strands of private law and public law as the spine of the degree. Obligations is thus used to introduce general private law principles in contract and property, which are extended and developed in the separate Contracts and Property (including personalty and land) subjects. These subjects are combined again in the capstone subject of Remedies, which considers forms of remediation specifically in torts, contract and equity, thereby deepening both the student's understanding of remedies as a coherent area of knowledge in its own right, and also the nature of each of these substantive fields of private law. Similarly, public law concepts within domestic and (public) international law are introduced in Principles of Public Law, and then deepened through the Constitutional and Administrative Law subjects. One other distinctive innovation in Melbourne, in terms of core subjects, is the combining of Civil Procedure and Legal Ethics in one subject, Disputes & Ethics. This enables lawyers' ethics to be learned transactionally and in context, through the study of the normal civil litigation and dispute resolution process.

In the USA, the American Bar Association (ABA) sets extensive standards for the accreditation of law schools, but has never prescribed curriculum content. Instead, in the absence of any separate professional legal training course, the need for law schools to prepare students for a relatively standardised state Bar Examination has, historically, set a *de facto* core curriculum based around Bar Exam requirements. The result has been that US law schools have, until recently, tended to deliver a strikingly homogeneous curriculum. This started to change following a series of critical reports from the ABA and others, culminating in the influential 2007 *Carnegie Report*,³¹ which criticised US law schools for the narrowness of their vision, and their failure adequately to prepare students for the transition into practice. In the context of this sustained critique, and declining enrolments in the wake of the global financial crisis, US law schools have entered into a sustained period of change. Harvard significantly broadened its first year experience to provide students with a better foundation in legislation, regulation, and international law; other elite and non-elite schools developed more specialist pathways or 'concentrations' through the JD, and a number converted the final year of the degree into a more structured preparation for the legal workplace. The latter has involved a far more explicit focus on legal

³⁰ The full-time credit load/year is 100 credits, representing 1360 NLH.

³¹ William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007) <<http://www.carnegiefoundation.org/publications/educating-lawyers-preparation-profession-law>>; see also William M Sullivan, 'After Ten Years: The Carnegie Report and Contemporary Legal Education' (2018) 14(2) *University of St Thomas Law Journal* 331.

and related practice skills, including business and entrepreneurship, and technological competences, often in small group and practice simulation settings that seek to better emulate the work environment.³²

This overview highlights changes that reflect a number of significant trends, particularly (though not exclusively) in common law legal education. These include

- A widening of debate about what law school can and should do, particularly in terms of explicit skills development and (more controversially) preparation for practice.
- An associated appreciation that the function of law schools is not just to convey a body of knowledge from lecturer to student: growing understanding of higher education pedagogies has placed the needs of the student, not the teacher, more at the centre of curriculum design as well as delivery.
- A more sophisticated appreciation has also developed of the need to achieve a balance in the breadth and depth of learning. Interestingly, law schools have come up with significantly different solutions, reminding us that curriculum design remains more art than science. Modularisation has been a significant driver of curriculum structure, and to that extent may limit options and shape the risk environment of a particular design. Modularisation does create risks of superficiality, by potentially breaking the curriculum down into smaller and sometimes insufficiently connected units, but it also assists in building a breadth of knowledge and skills, in forcing us (as teachers and course designers) to ask what really is important to know, and in enabling a more sophisticated building blocks approach to knowledge and understanding:³³ in other words, used carefully, it can help us ensure that a law degree is not, from the student's perspective, just three (or more) years of doing the same things with (seemingly) discrete bodies of decontextualized knowledge.
- Lastly, it reflects growing awareness that conventional definitions of 'core' legal knowledge may be, to some extent, a matter of custom and convenience,³⁴ rather than based on good epistemological grounds. The fragmentation of the curriculum, and the increased segmentation of legal practice into relatively distinct corporate and private client 'hemispheres' both encourage us to ask what is 'necessary' knowledge (both in conceptual and practical terms), and whether, and if so how much of, what is taught is 'just-in-case' learning that is rarely or never used after graduation.

³² See Alli Gerkman et al, *Ahead of the Curve. Turning Law Students into Lawyers. A Study of the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law* (Institute for the Advancement of the American Legal System, 2015); David M Moss and Debra Moss Curtis (eds), *Reforming Legal Education: Law Schools at the Crossroads* (IAP - Information Age Pub, 2012).

³³ Compare, eg, the discussions of the City Law School and Melbourne curricula, and the US transitional 3rd year model, above.

³⁴ For variants of this argument, see Peter Birks, 'Compulsory Subjects: Will the Seven Foundations Ever Crumble' (1995) 1 *Web Journal of Current Legal Issues* <<http://webjcli.ncl.ac.uk/articles1/birks1.html/en-en/birks1.rtf>> ('Compulsory Subjects'); William Twining, 'LETR: The Role of Academics in Legal Education and Training: 10 Theses' (2014) 48(1) *The Law Teacher* 94.

- At the same time, the move to new structures, and the continuing temptation to add new knowledge, skills, and context to the curriculum increases rather than reduces the very real risk of curriculum overload.³⁵ One particular consequence of curriculum overload is the likelihood that teachers and students focus on surface rather than deep learning³⁶ as a survival strategy. This may also exacerbate – or be exacerbated by - (apparent) preferences for didactic teaching as opposed to active or student-centred learning.

3.2.2 Structural variation and convergence in the Maldives

All of the Maldivian law schools have adopted a modularised model of curriculum design, with programmes taught generally over two semesters. The following evaluation of the curricula draw primarily on an analysis of their written curriculum documents. Further matters that arose in stakeholder discussions are addressed in section 4.

3.2.2.1 The structure of the ‘core’

The structuring of the traditional (English) common law ‘core’, ie, Contract, Constitutional and Administrative Law,³⁷ Criminal Law, Land Law, Equity and Trusts, and Torts, is broadly similar across the five law schools.³⁸ To that extent the programmes show a high level of consistency ‘on paper’. There is also some tendency to make additional subjects compulsory – notably Company Law, Evidence and Family Law reflecting, one suspects the historic but continuing influence of the Malaysian model on curriculum design. Aside perhaps from Evidence, other professional subjects – notably Civil and Criminal Procedure, and Lawyer’s Ethics are generally not required by the degree providers. Most teach the core subjects by splitting them into two modules.³⁹ This split seems to be used largely as an organisational convenience rather than as a developmental learning (‘building blocks’) device.

There is rather more variance around the organisation of Shariah subjects. Here there is a common focus on principles of Islamic jurisprudence, albeit to different degrees of depth, together, generally, with Criminal Law, and the major fields of Islamic personal law – Family and Inheritance Law. There is,

³⁵ William Twining, ‘Rethinking Legal Education’ (2018) 52(3) *The Law Teacher* 241.

³⁶ In educational practice, surface learning involves basic cognitive tasks such as recalling and reproducing content and skills. Deep learning engages higher cognitive capabilities, including engaging in a deeper search for meaning, applying knowledge and skills in new contexts or in creative ways (eg linking ideas and concepts across modules), and being able to engage critically with evidence and arguments - John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (Open University Press, 1999).

³⁷ Note that in England this is now almost universally taught as a single subject, though some law schools also include Administrative Law as a separate elective for those who wished to study the subject in more depth.

³⁸ This perception is reinforced by the fact that there is relatively little variation in credit-weighting of individual law modules (particularly ‘core’ modules), with the majority falling within the range of 12-15 credits (ie a total variance of about 30 learning hours, or about one week of full-time study).

³⁹ Avid is an outlier in this regard as all its core subjects are taught via a single module in each. There is some greater variation in approach across the HEIs in respect of Land and Equity.

however, marked variation in the balance between common law and Shariah (required) subjects across institutions. Thus the range extends from approximately 40% of Islamic subjects at IUM and Villa, and about one-third at MNU, through to less than 10% at Mandhu. It is not possible to say that such variance is out of line internationally – though it may be relatively uncommon in a single system. If one looks across mixed legal systems more broadly, the range of practices is very wide, For example, in some systems specifically Islamic foundations – eg the International Islamic University of Malaysia,⁴⁰ and the State Islamic University (UIN) Jakarta in Indonesia - maintain a majority of Shariah over secular subjects, but, by contrast, in the prescribed curriculum in Pakistan, only 4 out of the 34 required law modules are exclusively Shariah-based.⁴¹

3.2.2.2 The number and function of electives

By comparison with many common law (and even civil law) systems, the proportion of compulsory subjects in the Maldives is high. Historically in England and Wales, for example, compulsory subjects have tended to comprise about 50%-60% of the curriculum;⁴² in Australia and Canada, where there is a stronger focus on professional subjects, the proportion of compulsory to optional subjects tends to be nearer 75% to 25%.

Inevitably in mixed legal systems there tends to be a higher degree of compulsion.⁴³ This is particularly marked in the Maldives, and particularly for the three-year degrees, where there is essentially no choice.⁴⁴ A relative lack of choice is also a factor in both the MNU and IUM programmes where University required modules and language modules also absorb a large amount of curriculum load.

It should be acknowledged that this is at some cost. Electives add value to a programme in a number of ways. They can be used to either widen or deepen the student learning experience in the field, or to enable students to develop knowledge and skills beyond the domain of law. They may also be useful in systemic terms, insofar as scholarship and policy debate regarding new and emerging areas of law may remain underdeveloped in their absence. That absence may also be de-motivating for faculty and students alike, as it can deny both faculty and students the opportunity to explore areas of personal (including research) interest, which tend to be more intrinsically motivating. At the same time, however, the reality of relatively small cohort sizes in a jurisdiction such as the Maldives means that only a small number of options are likely in any event to be viable.

⁴⁰ It should be noted that this is in a context where the Malaysian Bar Council does not prescribe any Shariah subjects for professional qualification purposes.

⁴¹ See above, n.28.

⁴² There has been a move by some schools to reduce this further by converting some of conventional 'core' subjects into electives, recognising that a proportion of students reading law are not doing so in order to enter practice, and so should not be constrained in their subject choices by professional qualification requirements.

⁴³ A striking example is the five-year prescribed law curriculum in Pakistan, which includes only four electives out of a total of 60 modules – see Higher Education Commission (Pakistan), 'Curriculum of LLB (5 Years)', (HEC, 2015) <https://hec.gov.pk/english/services/universities/RevisedCurricula/Documents/2014-15/Final%20Curriculum%20%20LLB.pdf>

⁴⁴ Though for many students who attend these colleges this is likely deemed an acceptable trade-off, relative to the financial cost of a fourth year of study.

3.2.2.3 Professional skills and other competences

The absence of any professional legal training course in the Maldives has placed some burden on the law degree to fill the gap. Given the other basic demands on the programme, this is, in reality, an impossible task within the existing structure.⁴⁵ Some schools have sought to respond to the need in a variety of ways, including by the development of final year ‘practice’ modules.⁴⁶ Whilst this initiative is commendable, it is in reality too little, too late, and too varied. There are also, across the board, few opportunities within the curriculum to engage in independent or personalised learning through practicums (eg clinical legal education or simulation⁴⁷) or research projects.

This is significant. The recognition that any form of (higher) education is as much about developing ‘know how’ (skills) as well as ‘know what’ is by no means new.⁴⁸ What kinds of ‘know how’ is a more difficult question. In some jurisdictions the skills focus has tended to be very much on applied lawyering skills: client interviewing, practical legal research, drafting, negotiation and advocacy. These can be a useful and obviously relevant vehicle, but the focus on these applied skills can also distract us from the basic need to first develop *transferable* competences, particularly, in oral and written communication, research, and critical thinking and problem-solving that underpin those applied skills. Moreover, there is also a further capability that is perhaps even more central, and that is the capacity to use our existing knowledge and skills appropriately in novel or at least different situations. Development of this capacity to be *adaptable* is “probably the most important thing that we can hope for from formal education”⁴⁹, and also central to the idea of the multi-functional modern practitioner, who it has been said, “is expected not only to become an advocate and solicitor, but also a negotiator, mediator, adjudicator, author, problem solver, lobbyist, agent of reality and *agent provocateur*.”⁵⁰

At present, the problem is that, on paper (and it seems in practice),⁵¹ Maldivian law schools either (at worst) overlook the need for *both* explicit skills-based learning and training, and for an understanding of content that is located in a meaningful, real-world context, or, at best, perhaps, assume that students develop these skills and understandings intuitively. This, unfortunately, is not the case, and hence this is a gap that ideally needs to be addressed, both at the academic stage, and in the context of any plans for a new Bar Examination.

⁴⁵ See further the discussion of Bar training options in section 6.

⁴⁶ Eg, at Avid, Villa, and IUM.

⁴⁷ Developments in clinical legal education, or, more precisely ‘street law’, are noted (as above) but these are still at an early stage of development. Students are also encouraged, and in most schools it seems, supported to an extent, to obtain internships. At present these experiences are not normally credit-bearing, and not the subject of proper intellectual engagement and reflection.

⁴⁸ Neil Gold, Karl J Mackie and William L Twining (eds), *Learning Lawyers’ Skills* (Butterworths/Commonwealth Legal Education Association, 1989); Richard Winter, ‘Outline of a General Theory of Professional Competences’ in Julian Webb and Caroline Maughan (eds), *Teaching Lawyers’ Skills* (Butterworths, 1996).

⁴⁹ Twining (n 35) 250; see also Kim Economides and Jeffrey Smallcombe, *Preparatory Skills Training for Trainee Solicitors* (Law Society, 1991), who identified the ability to ‘break-in’ to a new problem or a new legal field as critical to the early years in practice.

⁵⁰ Nik Ahmad Kamal Nik Mahmod, ‘Maintaining Standards in Undergraduate Legal Education in Malaysia’ (2005) 17 *Singapore Academy of Law Journal* 913, 929 (quoting Professor Neil Gold).

⁵¹ Drawing on discussions with stakeholders and the Curriculum Working Group.

3.2.2.4 Language teaching

The nature and extent of language teaching is both a relatively distinctive feature of the Maldivian curriculum, and another point of variance between providers. There are three dimensions to this:

- The necessity and extent of required teaching of Arabic, as a proper basis for understanding and applying Shariah
- The extent to which it is appropriate to teach the majority or entirety of the degree in Dhivehi
- The extent to which students are introduced to English and/or Dhivehi for law

Based on the curricula alone, it was apparent that there is currently no single, unified, approach across institutions. It became apparent from stakeholder interviews that these were also all somewhat contentious questions. Discussion of the nature of the practical problems arising, and the question whether they require a formal professional *regulatory* solution are therefore also deferred to the following sections

3.2.2.5 Assessment practices

Assessment practices are somewhat tangential to this project, but also have some obvious relevance to curriculum design, (not least because assessment powerfully affects learning) and are within the terms of the Bar Council's responsibilities under the new Act.

Assessment can be an area of some sensitivity. It is a particular and necessary area of educational expertise, as attested by the massive literature on assessment in higher education, a growing subset of which addresses assessment in law school.⁵² Regarding the profession's involvement, practitioners are not experts in assessment, and so it makes little sense to expect the profession to second guess or re-evaluate assessment decisions within HEIs. However, the profession is entitled to some assurance that the outcomes of those parts of the degree that 'count' for qualification purposes (ie, what we might call 'qualifying' subjects) are robust, and a fair and reliable reflection of the abilities of the individual students seeking admission. To that extent it can be said that the profession has (minimally) a *specific legitimate interest* in

- The methods used by an HEI for ensuring the integrity of assessment processes and the verification of marks
- The extent to which the forms of assessment adopted (at least for 'qualifying' subjects) are robust and not unduly vulnerable to plagiarism or other breaches of academic integrity
- The relative consistency of assessment outcomes across institutions, in terms of meeting the range of qualifying competences

⁵² Eg, Lewis Elton and Brenda Johnston, *Assessment in Universities: A Critical Review of Research* (the Generic Centre of the LTSN network, 2002) <<http://eprints.soton.ac.uk/59244/1/59244.pdf>>; Alison Bone and Paul Maharg, *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (ANU Press, 2019); Barbara Glesner Fines and Judith W Wegner, 'Creating an Institutional Culture of Assessment' in Deborah Maranville et al (eds), *Building on Best Practices: Transforming Legal Education in a Changing World* (LexisNexis, 2015).

In terms of regulatory design, these issues may be evaluated as part of whatever ongoing quality assurance mechanism the professional regulator adopts. Alternatively, and this is an approach that is being developed by the solicitors' regulators in England and Hong Kong, the profession can sidestep the creation of additional QA mechanisms, by having its own uniform assessment process for those seeking entry. This is also the long-established function of the US Bar Examination. The use of pre-admission assessment is not necessarily as straightforward a solution as it sounds, but it is one option to be considered and is further discussed in section + following.

Looking across the existing curricula of the Maldivian HEIs, institutions have, for the great majority of law subjects, adopted an internally consistent structure, though each law school has also adopted quite a different assessment framework, as follows:

- Avid: 50% coursework and 50% examination
- Mandhu: 70% 'continuous' assessment; 30% examination
- MNU: 10% Attendance and participation; 30% class tests; 60% examination
- Villa: 30% coursework; 70% examination

In terms of best practices, two general observations can be made about this pattern. First, there is virtue in internal consistency and some degree of standardisation of assessment across a programme, but this should not be taken too far. It may indicate a tendency to assess a relatively narrow range of competences, or indeed to over-assess the same competences. Secondly, programmes that have only a small component of assessment under controlled (ie examination or examination-like) conditions, may be more vulnerable to plagiarism and cheating, unless assessors are inventive in plagiarism-proofing their other assessment tasks.

Consequently, for professional purposes it may be advisable (i) to specify a range of competences which should be assessed, and (ii) to require a majority of assessment (eg 60% or more) under controlled conditions. This does not necessarily mean that the majority of assessment is in the form of a traditional (unseen) examination, there are multiple ways of assessing under controlled conditions, but they do have the common virtue of being less open to abuse.

In the light of these points, both the Mandhu and MNU assessment structures might, in principle, raise some concerns. With only 30% of assessment under controlled conditions, the Mandhu scheme at least begs questions regarding assessment reliability. On the other hand the MNU scheme is, in that sense, robust, but then begs questions regarding the breadth of competences assessed, especially, eg, in respect of oral communication and presentation skills, legal research and more extended writing tasks.

4. Quality issues arising

The focus of both the desk research and the fieldwork has been on the scope for curriculum improvement and quality enhancement in the Maldivian system. This does not mean that the project has started from any assumption that existing law degrees are necessarily of 'poor' quality. Nor does this report seek to argue that change should be undertaken for its own sake. The recommendations that follow are grounded in local concerns regarding gaps, inconsistencies and less satisfactory institutional practices 'on the ground', framed by an understanding of international good practice.

This does mean that the project has concentrated primarily on what is not working (or not working as well as it might be) about the system, rather than on what the system does do well. There is a risk therefore that the story it tells will appear somewhat unbalanced, especially to the law schools and their students. For those who would argue that this report is unfair to the law schools, two responses should be borne in mind:

- (i) this exercise was not designed as a complete review of law school quality. It is essentially a curriculum review and the analysis and recommendations that follow are restricted primarily to curriculum issues;
- (ii) the ultimate aim of this review is both positive and limited: it is to suggest a way forward for the professions and the law schools that provides the profession with the assurance it needs in respect of minimum standards and consistency across HEIs, while leaving the law schools with a proper degree of autonomy over the design and delivery of curriculum.

A further limitation should also be noted: the timeframe for this study means that views have been obtained from only a relatively small number of students, practitioners and other stakeholders, with limited opportunity to check and triangulate findings to the extent that a more rigorous review would.⁵³ Nor has it been possible to undertake any formalised training needs analysis across the sector. In other words, the concerns identified need to be treated with some caution.

With these limitations in mind, a range of relevant issues have been identified. These are grouped into three sections, which consider, first, issues with the curriculum documentation; secondly ongoing debate about the scope and (professional) utility of what is currently taught on the law degree, and the nature of any gaps, and, thirdly, what are the significant constraints on change?

4.2.1 The currency and consistency of curriculum documentation

Many of the formal course documents reviewed were outdated and did not necessarily reflect the subjects as currently taught. In some instances it appears that the formal curriculum documents have not been revised or updated since they were used for MQA accreditation purposes.

⁵³ Though as a general rule the issues emphasised below have been raised independently by more than one stakeholder group.

We were not able to establish whether all law schools maintained a central bank of current teaching outlines, nor did we attempt to obtain access to and review all current teaching outlines or materials. (These are relevant, as they should be drafted on the basis of the formal curriculum, but should also include relevant updating.) Consequently it is not possible to say conclusively whether appropriate updating is or is not being done systematically.

Some comments, including from experienced part-time teachers, gave cause for concern, notably:

- There may be a lack of effective module coordination, so that materials may not be fully updated, or it is left to individual teachers to decide whether and how much to update materials
- Adequate reference to local law is not always included, particularly in respect of recent legislative changes
- The syllabi, if followed, are, in any event, too extensive and impossible to 'cover' in the time available.

These concerns link also to the question of consistency. If curricula are not being adequately updated or followed across the board, then there is some loss of consistency and reliability in the degree as a baseline for practice. This assumption directly underpins the regulatory powers given to the Bar Council, reflecting the view, expressed by the Attorney General, that standardisation is critical, particularly with the higher numbers of graduates (and larger number of HEIs) in the system.

4.2.2 Scope: is the current curriculum fit for professional purposes?

There is widespread recognition that the existing curriculum is overloaded. The obvious answer therefore is to reduce the load; 'how' and 'by how much' are, however, more difficult questions, and ones about which it is harder to obtain a consensus.

The issue moreover is not just quantitative. The Maldives curriculum will not be improved simply by teaching less (though that is a good start); it also needs to teach some different things, and to teach differently, if it is to prepare students for the modern world of practice.

What are the things that need to be taught? From stakeholder meetings and the curriculum working group, it readily became apparent that the 'traditional' six core English subjects served as, at least a 'good enough', starting point. Different views were expressed as to the importance of land law and trusts, with a number expressing the view that trusts, in particular, did not require a full subject load. A number of other subjects were also suggested; company law in particular was highlighted as important by some. Three other areas of more general application also stood out as gaps in the present curriculum. The first concerned professional ethics and standards, which both academics and practitioners saw as necessary within the degree programme, aside from any continuing vocational requirement. The second addressed a perceived need for more integration (in at least some of the law degrees) and discussion of human rights, both domestic and international. The third perceived gap

concerned the need for students to better understand the business of law. This has been highlighted in other jurisdictions as well, often in terms of developing students' "commercial awareness".⁵⁴

In terms of Shariah law, views were in some respects more polarised. Some took the view that as a matter purely of *professional* regulation, separate from wider questions as to the academic content of the law degree, there was no need to include discrete Islamic law subjects within the required curriculum. In other words, the study of the principles of Islamic jurisprudence was a sufficient foundation. Others took the view that Islamic Criminal Law and the main areas of personal law, should be addressed, while other areas, including *Zaqat* and principles of commercial and financial law were also mentioned. Ultimately, the issue of Shariah content raises the deeper question of *purpose* and *focus* for the law schools (and their regulation) today. To paraphrase Parsons and Makruf: to what extent is the core mission of the law school to produce 'contemporary-minded' lawyers rather than Islamic scholars 'well-versed in classical *fiqh*'?⁵⁵ We return to this question in section 5.1.

In relation to the curriculum more generally, there is, as already noted, a concern that neither common law nor Shariah as taught are sufficiently contextualised within the operations of the Maldivian legal system, meaning that the theory taught is relatively abstract and de-contextualised. This is not helpful to students, and it is also not healthy for the development of the Maldivian system. Ideally legal scholarship should play a role, alongside practice and the work of the courts, in shaping and developing both legal doctrine and legal policy. At present there is relatively little evidence of this happening. This historically appears to be for a number of reasons:

- Irregularities and inconsistencies in the publication of legal resources, particularly case reports, so that it has been extremely difficult to formulate a cogent and comprehensive sense of the local jurisprudence and its relationship with established principles.⁵⁶
- A former culture of hostility from the Supreme Court to any form of critical analysis or commentary on its decisions
- A relative lack of resources and research culture within the law schools, exacerbated by high teaching loads and heavy reliance on part-time staff
- Few domestic sources of research funding or outlets for publication⁵⁷

⁵⁴ In the English Legal Education and Training Review, 'commercial awareness' was defined as a composite attribute comprising an awareness of the business of law and how law practices are run; the ability to give commercially relevant advice, taking account of the client's business needs; an awareness of the importance of understanding the sector within which the client operates; basic financial and business numeracy. See Julian Webb et al, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (Legal Education and Training Review, June 2013), 2.74-2.77 <<http://www.lettr.org.uk/the-report/>> ('LETR Report').

⁵⁵ Jemma Parsons and Jamhari Makruf, 'Islamic Legal Education in Indonesia: Tradition in Transition' in S. Steele and K. Taylor (eds) *Legal Education in Asia: Globalization, Change and Contexts*, (Routledge, 2010).

⁵⁶ We were advised by the Department of Judicial Administration that a project is underway to regularise the online publication of superior court decisions. This is to be welcomed as an obviously critical advance, both generally in Rule of law terms, but also in enabling a local legal scholarship.

⁵⁷ Acknowledgement is due here to the contribution of the Maldives Law Institute, which has sought to reduce the deficiency.

Though some of the external constraints on scholarly work are clearly easing, the effects overall have been structural and will likely continue to impact the ability of the law schools to teach Maldivian law unless positive steps are taken to improve the conditions and opportunities for scholarship.

The largest gaps, however, were seen to be in the area of skills. Overall, stakeholders recognised that there were critical gaps in terms of both professional and general transferable skills. Key professional skills that were highlighted included client communication skills, legal drafting, and advocacy (which was particularly identified as deficient by both the Supreme Court and the Prosecutor-General's Office). The extent to which these could or should be addressed at degree level, or by subsequent training and development is addressed in the next section.

In terms of general transferable skills, comprehension and research skills were highlighted as critical in both academic and practice terms. The point was made that that the relative lack of a local jurisprudence means that practitioners are heavily reliant on concepts and applied principles derived from foreign jurisdictions. Consequently the ability to find and make sense of primary and secondary sources is critical. The extent to which students expect to obtain, and then rely on the lecturer's summarised notes was, in this context, highlighted as a significant deficiency in preparing students for practice. There were also identified needs with respect to students' general oral and written communication skills, and support in developing the resilience⁵⁸ to cope with the challenges of practice.

Skills in particular cannot be taught didactically. Teaching differently therefore needs to be an aspiration of all the law schools. Some training and support from the profession, and from experts in pedagogy, including in skills-based learning, would be useful.

More fundamentally, it was suggested that the following also need to be addressed to some degree:

- Developing a less teacher-centred culture: as was acknowledged in the curriculum Working Group, many Maldivian students (and perhaps some teachers) subscribe to the 'banking' theory of learning, whereby it is the job of teachers to deposit information in the heads of students. This is inefficient and unhelpful insofar as it takes the onus away from the student and means that anything not expressly taught is not learned. Particularly in the context of large and challenging syllabi, it encourages passive learning by default, and the conversion of teaching into a matter of information transfer, rather than a deeper engagement in understanding and applying knowledge. This needs to be addressed from day one of law school through both curriculum design and the design of teaching and learning.
- Developing a stronger focus on the application of both common law and Shariah in the Maldivian system. There was a perception that the degree currently is too abstract/theoretical and does insufficient to educate students in the local law. It was acknowledged that this is, for a

⁵⁸ This is also recognised as a gap in legal training internationally, see, eg, College of Law, New Zealand, 'Understanding Resilience', *The College of Law Group* (2011) <<http://www.collaw.ac.nz/Research-and-Resources/Resilience-at-Law/>>; Colin James, 'Lawyers' Wellbeing and Professional Legal Education' (2008) 42(1) *The Law Teacher* 85; Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016). Wellbeing also has an institutional/ethical dimension insofar as it may be relevant to assessments (including self-assessments) regarding one's capacity and competence to practise.

whole variety of reasons, a challenging task, and one with which the law schools will need the support of the profession and the judicial system.

- Achieving better understanding of core principles/basic concepts within existing subjects: ie there was a sense that these central concepts and principles are sometimes lost to students when the focus of teaching appears to be on the mass of detail. There was also some recognition that such problems are exacerbated by a number of structural problems associated with the increasingly (de facto) part-time nature of student engagement. The system's heavy dependence on evening and block teaching were thus specifically criticised by some. These are difficult problems that are not unique to the Maldives. There are no easy solutions given the current economic climate and its impact globally on the business of higher education, and it is unrealistic to expect that HEIs can (or should) turn the clock back to a system that teaches the small elite that can afford traditional full-time study. Some modern teaching solutions (arguably) exist. They tend to involve a fairly radical re-thinking of how classroom time and assessment⁵⁹ are used more productively to engage students in real learning. The deployment of technology to create 'blended learning' and 'flipped classroom' experiences seems to be particularly effective.⁶⁰
- Improving entry standards: there appears to be widespread concern that entry standards have declined as student numbers have increased. This, it was said, puts pressure on the law schools to lower the demands of the curriculum to meet the capabilities of the students. This is plausible, and (again) by no means unique to the Maldives. Two concrete concerns have been raised which could be addressed through admissions standards: that the level of the (alternative) foundation courses for non-high school graduates is too rudimentary; the English language competence of students is largely insufficient – this is obviously a significant issue in common law subjects where the majority of sources are in English. Language problems also arise in relation to Shariah subjects, where it is often argued that students need a significant proficiency in Arabic. The latter is addressed by some schools to an extent that the former is not. Moreover, whilst it was widely acknowledged that the protection of the Dhivehi language is of obvious cultural importance, it was argued by some stakeholders, including the MQA, that this was not a sufficient justification for the teaching of an entire law degree in Dhivehi.

⁵⁹ The US *Best Practices* project opined that "the current assessment practices used by most law teachers are abominable," a conclusion that properly extends to many assessment practices deployed beyond US shores: see Roy Stuckey et al, *Best Practices for Legal Education* (Clinical Legal Education Association, 2007), text at notes 696-700; see also Glesner Fines and Wegner, above (n 52) on the critical importance of developing an *institutional* assessment strategy rather than rely on piecemeal development.

⁶⁰ Flipped and blended learning are terms that are used, somewhat interchangeably, to describe a pedagogic model in which students engage with online and interactive content focusing on key concepts before class, allowing face-to-face time for more student-centred and collaborative activities that clarify concepts and contextualise knowledge through application, (critical) analysis, and problem solving. See, eg, Melissa Castan and Ross Hyams, 'Blended Learning in the Law Classroom: Design, Implementation and Evaluation of an Intervention in the First Year Curriculum Design' (2017) 27(1) *Legal Education Review* 20; Lutz-Christian Wolff and Jenny Chan, *Flipped Classrooms for Legal Education* (Springer, 2016).

- There may be some significant issues around teaching standards, though this project was not able to pursue this systematically. Some instances of wholly inadequate teaching practice were disclosed by former students, and institutions also acknowledged the difficulty of recruiting sufficient qualified and experienced staff, particularly into part-time roles. It was apparent too that some current teachers feel disempowered, and lacking in the tools and the institutional support to address student demands for 'spoonfeeding'. These kinds of problems can make it harder for institutions to initiate and maintain positive changes in curriculum and delivery.

Self-evidently, the majority of these larger issues (assuming they are significant in scale and effect) will not be resolved by curriculum reform alone, but curriculum reform, together with external regulation, may constitute an important driver of change. This leads us into the question of what a reformed curriculum might look like.

5. Curriculum re-design: principles and proposed solutions

5.1 The objectives

The primary goals of this curriculum reform, it may be argued, are to ensure that students

- (a) are presented with an enriching and challenging learning experience, commensurate with the opportunities of studying two of the world's great legal traditions in tandem, and
- (b) have received an adequate *academic* preparation for entry into the legal profession, or to take their place in society in other professional and leadership roles.

From the perspective of professional regulation, preparation for the profession of law is obviously the primary goal, though it will likely be supported by a legal education that is both enriching and engaging, and geared, at least in part, to meeting the broader real world needs of its students.

5.2 Design principles

On what principles should legal curriculum and, a larger question also engaged by the extent of the Legal Profession Act reforms, a legal education *system* design be based? The recent Hook Tangaza report⁶¹ for the Irish Legal Services Regulatory Authority has usefully summarised a set of core design principles for a proper and effective system of legal education and training:

- (a) It defines the competencies required of a legal practitioner, ie, it focusses training primarily on what an effective lawyer should know, on what they should be able to do, and how, ethically, they should behave;
- (b) It is open and accessible to new entrants, ie, admission systems should be transparent and there should be no unnecessary barriers to entry;
- (c) Training arrangements support the achievement of competences
- (d) Systems of assessment and accreditation provide assurance that competencies have been achieved
- (e) There is appropriate governance and oversight

The following design discussion focusses on principles (a) and (c), which are central to the task of curriculum design. The other principles are taken into account in the recommendations contained in section 6, and will be touched on there.

⁶¹ Hook Tangaza, *Review of Legal Practitioner Education and Training* (Legal Services Regulatory Authority of Ireland, 2018).

5.2.1 Defining and supporting the competences required

The following discussion considers best practices in setting and specifying curriculum requirements and standards. In the process it also provides some indications of what an overarching system of academic and vocational education and training for the Maldives might involve.

5.2.1.1 Specifying (setting) the standards

In terms of best practice, there has been a marked tendency in curriculum thinking to conceive of the degree and vocational training as building not just legal knowledge, but as necessarily and consciously developing intellectual and practical skills, and personal and professional attributes and values as well.

The starting point for much of this work has been the foundational US MacCrate Report,⁶² which was one of the first formal assessments of legal education to develop a tripartite model of knowledge-skills-professional attributes as constituting the three key domains of professional competence. This conception has been widely adopted in later reports and studies, including the 2007 Carnegie Report in the USA, the ACLEC⁶³ and LETR Reports in the UK as well as in the ALTC's design of Threshold Learning Outcomes in Australia (already cited). It was also influential in developing curriculum in the new National Law Schools in India,⁶⁴ and in both the Redmond-Roper⁶⁵ and SCLET⁶⁶ Reports in Hong Kong. It also recently found empirical support from large-scale research in the US which found that law graduates are more likely to be successful when they "come to the job with a much broader blend of legal skills, professional competencies, and characteristics that comprise the *whole lawyer*."⁶⁷ This broad framework thus offers both a logical and empirically valid way of framing professional competence. It is therefore taken as the starting point for curriculum re-design in the Maldives.

Within this larger structure there is then the crucial matter of detail. Here we are concerned to define the actual *range* of knowledge-skills-professional attributes. This has been the subject of extensive work by regulators and educationalists. Current practices were extensively reviewed in both the LETR and Hong Kong SCLET Reports. As a result of its meta-analysis, the SCLET Report⁶⁸ concluded that the range of *professional work* competences could be characterised as falling into seven relatively high-level sets ('meta-competencies')

⁶² American Bar Association, Section of Legal Education and Admissions to the Bar, *Report of The Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA, 1992) ('MacCrate Report').

⁶³ Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC), 'First Report on Legal Education and Training [ACLEC Report]' (ACLEC, 1996).

⁶⁴ Law Commission of Bangladesh, *Review of Legal Education* (2006)

⁶⁵ Paul Redmond and Christopher Roper, *Legal Education and Training in Hong Kong: Preliminary Review* (Report of the Consultants, The Steering Committee on the Review of Legal Education and Training in Hong Kong) <http://www.hklawsoc.org.hk/pub_e/news/societyupdates/20010813.doc/preliminarypages_revised_1.pdf>.

⁶⁶ Anthony Rogers, Tony (ATH) Smith and Julian Webb, *Comprehensive Review of Legal Education and Training in Hong Kong: Final Report of the Consultants* (Standing Committee on Legal Education and Training, April 2018) <<http://www.sclet.gov.hk/eng/publications>> ('SCLET Final Report').

⁶⁷ Institute for the Advancement of the American Legal System, 'The Whole Lawyer and the Character Quotient' available online at <http://iaals.du.edu/foundations/reports/whole-lawyer-and-character-quotient>.

⁶⁸ Above (n 63) at section 7.4.2.

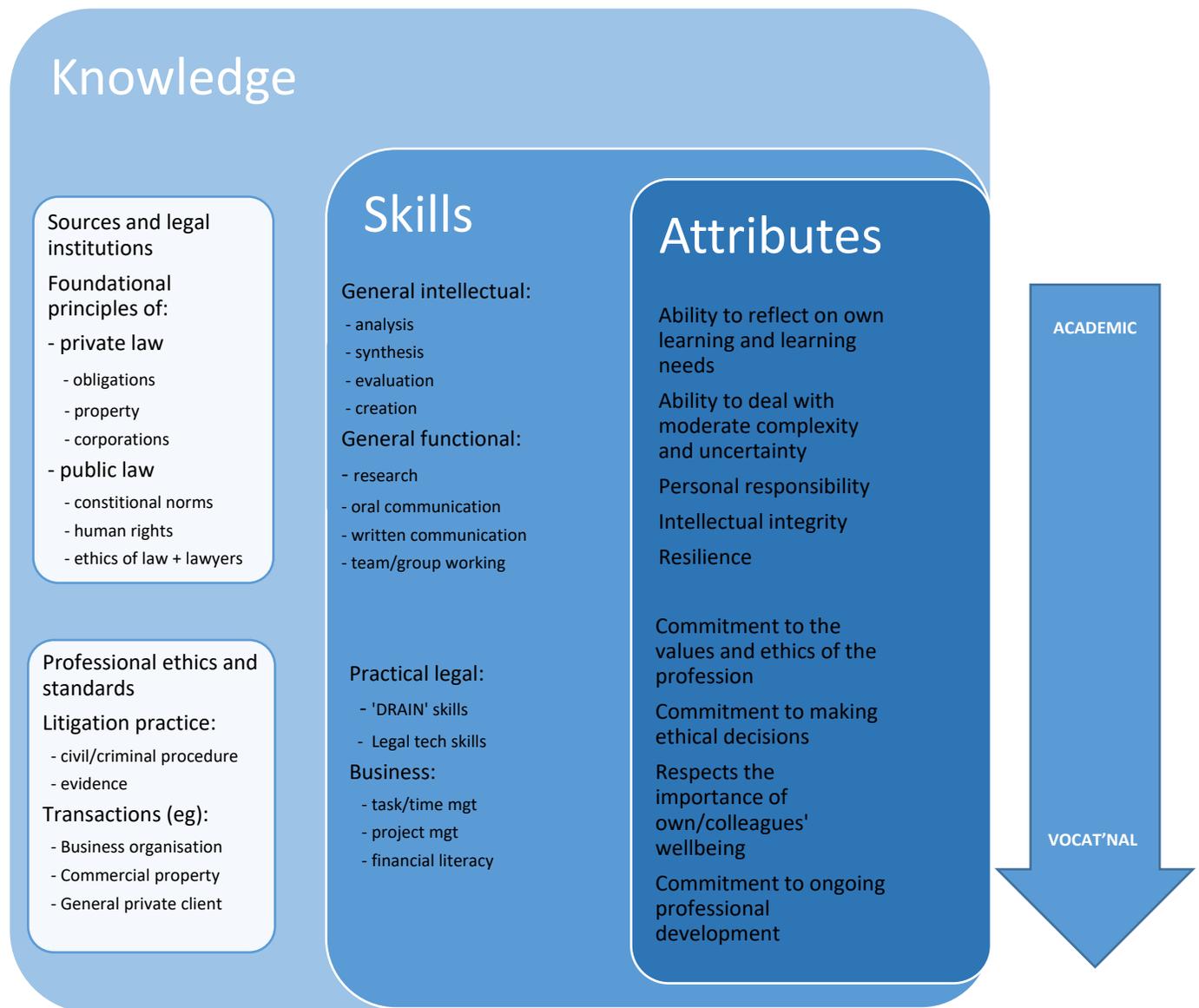
- To demonstrate competence in a relevant area or areas of practice (technical knowledge)
- To perform a range of legal tasks (task skills – client interviewing/conferencing, legal research, drafting and advocacy)
- To manage a range of tasks within a job (task and project management skills – including time management)
- To respond to uncertainties and breakdowns in routine/normal activities (task/project contingency management)
- To work effectively for and with others (team and professional relationship skills)
- To identify and deal with embedded issues of ethics, professionalism and professional regulation ‘in context’ (ethical and regulatory risk management)
- To reflect on and understand the limits of one’s own competence and to address one’s own personal and professional development needs (self-management)

This framework deliberately does not disaggregate those competencies in respect of different stages of training, it seeks first to define the end point or outcomes of initial legal education and training in totality. This reflects the fact that professional education is purposive: its primary function is to assure the public that newly admitted lawyers have at least a baseline level of competence across the necessary domains. Moreover, professional education design theory suggests that this end is the logical starting point for design: we determine what competencies are required of the new lawyer on ‘day one’ in the office, and work back. Historically, however, most legal education systems have been built from the bottom-up, starting with a heavy dose of doctrinal academic knowledge. The result has often been the exclusion of important skills from *any* conception of formal training, and, in some jurisdictions, a continuing ‘turf war’ between the academics and the profession over education and training priorities, disputes about what should be taught where, and the spectre of an ever-expanding university curriculum. Unfortunately, the process initiated by the Legal Profession Act risks repeating this error. Rather than construct the system holistically from workplace needs and a blueprint for vocational training, this project has started with the law degree, and had to make a range of assumptions about what may be possible by way of further training for the Bar Exam. Consequently, it is helpful here to attempt some disaggregation, and make the larger design assumptions evident before progressing further into the detail of the regulated academic curriculum. The following schematic (overleaf) seeks to demonstrate those assumptions.

It should be noted that the schematic also makes one significant overarching assumption: that there is a need for some kind of specialist vocational training. The existing law degree structure does not have the capacity, nor do the law schools necessarily have the skills at this point to fulfil that need. Conceptually, it would be feasible to construct a fully professional law degree, though there are challenges in so doing. As noted above US law schools have in theory long fulfilled this role, but historically have underplayed the importance of skills and practical, transactional, learning. Specific law schools in (eg) the UK and Australia have also developed professional degrees by integrating (to varying degrees) the academic and

vocational requirements into a single programme.⁶⁹ Any system devised for the Maldives need not preclude equivalent developments here, but in real terms it would likely require 2-3 years development time before such a model could be operational, and it would likely need a minimum of a four to four and a half year degree. For the moment therefore, a split stages model is assumed. This has significant implications for what is taught and where.

The knowledge domain is therefore divided so that the law degree establishes a solid and reasonably wide foundation. At the vocational stage, most courses also take a broad approach, developing competences across litigation and transactional work, notwithstanding the fact that this breadth is less common in practice given increased specialisation by the bar.



⁶⁹ Examples include the University of Newcastle in Australia, and the Universities of Northumbria and Westminster in the UK.

The English Legal Practice Course (for example) has represented a compromise in this respect, with the majority of teaching divided between litigation and business law and practice, with (other) areas of private client work addressed mostly by shorter specialist options. The proposed Solicitors Qualifying Examination in England maintains a broad base of knowledge assessments in its first stage, reflecting the existing law degree *and* vocational course requirements, but permits a relatively high degree of specialisation in its stage two assessments, discussed in section 6. Methods of assessment for stage 2 will draw on the objective structured clinical examination (OSCE) model developed in medical education,⁷⁰ but also used – seemingly successfully – by the Solicitors Regulation Authority in assessing the competence of overseas lawyers seeking to transfer into the English solicitors’ profession.⁷¹

We turn now to the scope of the three domains, knowledge, skills and attributes central to this project.

(a) The academic knowledge domain

In terms of common law subjects, the Maldives system has, as a minimum, and with some additions, adopted the English model of six core subjects⁷² (though in the UK setting, European law was added as a seventh) as constituting the basic ‘foundations’ of legal knowledge.

Whilst, as noted, this idea of foundational subjects has been contested by some, stakeholders consulted in the LETR process largely supported the existing range of subjects as a sufficient core. The LETR Report consequently recommended maintaining the status quo (an approach which has been essentially adopted in reform proposals since 2013). The core in New Zealand follows this model (with the addition of Legal Ethics as a seventh subject), and the Republic of Ireland is also similar (a seventh subject there being Company Law). Scotland as a mixed civil/common law system takes a slightly different approach, framing its legal knowledge outcomes around six areas: the Legal Systems and institutions affecting Scotland, and the law governing Persons, Property Obligations, Commerce, and Crime. The minimum credit weighting attributed to the core in both England and Scotland equates to not less than half the total credits for a three year degree.

Other jurisdictions, such as Australia, Hong Kong and India have a significantly larger foundation, by virtue, in part, of including more obviously vocational subjects, such as civil and criminal procedure within that core. Debate about reducing prescription has been ongoing in each of those jurisdictions. Consequently it cannot be said that there is an ideal or ‘magic number’ for compulsory subjects as the table below (extracted from the LETR Report)⁷³ shows. Consequently this project has taken a relatively pragmatic approach to the specification of the core, in terms of seeking agreement as to the breadth of subject ‘coverage’ whilst also trying to limit the risks of curriculum overload and coverage, and of unnecessary duplication and repetition across academic and vocational stages.⁷⁴

⁷⁰ See ‘OSCE - Objective Structured Clinical Examination - Kaplan QLTS’ <<https://qlts.kaplan.co.uk/the-assessment/osce>>.

⁷¹ Eileen Fry, Jenny Crewe and Richard Wakeford, ‘The Qualified Lawyers Transfer Scheme: Innovative Assessment Methodology and Practice in a High Stakes Professional Exam’ (2012) 46 *The Law Teacher* 132.

⁷² Constitutional Law, Contract, Criminal Law, Land Law, Equity & Trusts, Torts.

⁷³ Above (n), Table 4.4.

⁷⁴ See further the commentary on Recommendation 3 in section 6.

Table 4.4: Mandatory subjects in common law degrees

ENGLAND AND WALES	SCOTLAND	AUSTRALIA	INDIA	CANADA
Contract	Obligations [includes civil evidence]	Contract	Contract 1/Contract II	Contract, tort and land
Tort		Tort	Tort and consumer protection	
Land	Property [real and personal]	Land	Land law including transfer/land law	
Constitutional/HR	Legal system and institutions [includes EU institutions; HR pervasive]	Administrative law Federal and state constitutional law	Constitutional law Administrative law	Constitutional law Administrative law
Crime	Crime [includes criminal evidence]	Criminal law and procedure	Criminal law	Criminal law
	Commerce	Company law	Company law	Commercial law
Equity and trusts	Persons [trusts, succession and family]	Equity		Common law and equity Application of Canadian law
EU		N/A	N/A	N/A
		Civil procedure	Civil procedure and limitation	
		Ethics		Ethics and professionalism
		Evidence	Evidence	
			Statutory interpretation	Statutory interpretation
			Arbitration and ADR	
			Family Law I/ Family Law II	
			Criminal procedure, youth justice and probation	
			Employment law	
			Environmental law	
			Human rights and international law	
			Jurisprudence	
			Legal writing and language, English	

Table 5.1: Mandatory subjects in law degrees (LETR Table 4.4)

A further relevant factor in the Maldives is its nature as a plural system, so that a ‘core’ of Islamic law is also a requirement. As noted, this adds appreciably to the curriculum load, but, on balance, is integral to a proper appreciation of the Maldivian system.

Islamic law, it is said

is not like western courses in contracts, trusts or banking law and so on, because Islamic law is not statute law and thus has no single definitive content. Although in recent years, codification

of some areas of Islamic law has occurred, the vast corpus of Islamic law continues to be taught and applied as 'principles of law' rather than 'the law'.⁷⁵

This highlights the central importance of developing a proper appreciation of the sources, methods and jurisprudence of Islamic law. That said, curriculum is also commonly taught through the medium of substantive sub-fields, such as Islamic banking and finance, the law of transactions, criminal law, family law and the law of inheritance. The scope of the Islamic law core is a question that has been specifically discussed with the universities and other stakeholders. At this stage there appears to be a reasonable consensus around four subject areas: Islamic jurisprudence; Islamic Criminal law, Islamic Family Law, and Islamic Inheritance Laws. Together these are thought to provide a sufficient breadth of subject matter, including subjects that are both key areas of Islamic personal law, and subjects that are highly relevant to, and to some degree, codified within Maldivian law. This is reflected in the recommendations that follow.

Whilst there has been a broad consensus among stakeholders that the primary focus of the degree should be on academic subjects, the central importance of professional ethics and conduct has also been acknowledged. This is consistent with a growing trend in common law countries to include lawyers' ethics within the university curriculum, thereby recognising the importance of reinforcing from the earliest stages of qualification the significance to the role of the lawyer of principles of public service, independence, integrity and commitment to the rule of law. As the SCLET Report in Hong Kong also acknowledged, the academic stage can "provide a more critical and less client- and rule-centric context to begin such conversations than vocational training".

Whether cognate common law and Islamic law subjects should be taught separately is a question that has also been raised in a number of stakeholder discussions. Integrated teaching would better reflect Maldivian law as it is practised, especially in areas like criminal law where Shariah principles are commonly referred to in practice settings. The bi-jural quality of the Maldivian system obviously offers significant opportunities to innovate in curriculum design, and to teach law conceptually and comparatively across traditional boundaries,⁷⁶ however there appears to be little or no tradition of so doing within the existing degree system. The difficulties of enabling, let alone requiring teachers to teach across the two legal traditions are obvious. This might be resolved by developing shared subjects and team teaching, but, in regulatory terms this is, it is submitted, a step too far, and could actually result in a decline in teaching quality if not done well. Accordingly the report encourages, but will not oblige, HEIs to adopt more integrated teaching.

⁷⁵ Shaheen Sardar Ali, 'Teaching and Learning Islamic Law in a Globalized World: Some Reflections and Perspectives' (2011) 61 *Journal of Legal Education* 206, 207.

⁷⁶ Perhaps the most sophisticated example of this is in the 'trans-systemic' curriculum developed by McGill University in Quebec (a mixed civil law-common law jurisdiction). The curriculum there was reformed from a relatively separate bi-jural model, to a far more integrated approach that foregrounds theories of law and legal pluralism, and comparative approaches to law: see Helge Dedek and Armand de Mestral, 'Born to Be Wild: The "Trans-Systemic" Programme at McGill and the De-Nationalization of Legal Education' (2009) 10(7) *German Law Journal* 889; Julie Bedard, 'Transsystemic Teaching of Law at McGill: "Radical Changes, Old and New Hats"' (2001) 27 *Queen's Law Journal* 237.

(b) Skills and attributes

As noted, there is limited evidence of the direct teaching and assessment of skills in Maldivian law degrees. Skills-based learning has, however, become established practice across most developed higher education systems over the last 20+ years, in the context of a growing focus on employability and 'graduate attributes'.⁷⁷

The distinction between skills and attributes can be somewhat fluid, however. Skills are generally regarded as aspects of 'know how' that can generally be taught in classroom, or sometimes experiential or workplace settings. Attributes, by contrast, are less easily defined personal characteristics and values, and are the subject not so much for teaching as engagement with and reflection, though some attributes (eg self-management, confidence, resilience) can be influenced by relevant interventions. The emphasis on attributes reflects the recognition that "...employability goes well beyond the simplistic notion of key skills, and is evidenced in the application of a mix of personal qualities and beliefs, understandings, skilful practices and the ability to reflect productively on experience...in situations of complexity and ambiguity."⁷⁸

In the legal professional context, the MacCrate Report⁷⁹ did useful work in articulating what we might describe as the continuing expectations and attributes of a (new) lawyer. Notwithstanding its US context, the MacCrate statement of skills and values is reproduced on the pages following merely to exemplify how a range of skills and attributes might be functionally defined.⁸⁰

The proposed approach here, in terms of specification and hence regulation of skills and attributes, is relatively limited and light touch by comparison with MacCrate. It recommends that the law degree focusses more narrowly on underlying academic skills and attributes. It is not recommended that degrees contain discrete skills modules, since most of the academic skills and attributes prescribed for the academic stage are best addressed in an integrated fashion in the context of specific, contextualised learning. Four particular objectives underlie the design as it stands:

(i) It encourages each law school to consider explicitly how and where these skills and attributes are best developed in the curriculum. It is recommended that law schools actively identify and map the graduate attributes they seek to achieve (if they have not already done so).

(ii) It acknowledges that communication skills are critical: assessing the academic content of a piece of writing or a presentation is not assessing the skills. Law schools should be expected to allocate teaching time to *teaching* oral and written communication skills, preferably in both English and Dhivehi, and to directly assessing those skills.

⁷⁷ That is, the generic qualities and skills that university graduates should possess at point of graduation: see, eg, Paul Hager and Susan Holland (eds), *Graduate Attributes, Learning and Employability* (Springer, 2006); Susanne Owen and Gary Davis, 'Law Graduate Attributes in Australia: Leadership and Collaborative Learning within Communities of Practice' (2010) 4(1) *Journal of Learning Design* 15.

⁷⁸ Manze Yorke, *Employability in higher education: what it is - what it is not*, (Higher Education Academy, 2006), 13.

⁷⁹ Above (n 62).

⁸⁰ Two components – on litigation and ethics are not reproduced because they are fundamentally knowledge-based in formulation.

(iii) It should be noted that a critical gap often identified by both legal and other employers⁸¹ is in students' inability proactively to define and engage with real-world and ill-defined problems that engage the three domains of knowledge, skills and attributes. Whilst some degree of realism is required, in terms of recognising how far higher education can 'bridge the gap' between theory and applied problem-solving, feedback from stakeholders suggests that more could generally be done to prepare Maldivian students for that quintessentially professional role.

(iv) An engagement with student attributes is also critical to developing ethical competence. An extensive body of research highlights the gaps between knowing what is the right thing to do and doing the right thing.⁸² While no system of education can make people ethical, students should be encouraged to examine how their (and in future their client's) personal and professional values play a significant role in determining action. Much of this discussion may be better located in vocational or continuing legal education, but the academic stage can also play a role by enabling students to engage with the underlying values of the legal system, the norms of the profession, and the dissonances that may exist between those norms and their own beliefs, and the beliefs of other non-lawyer actors.

The structure proposed anticipates that specifically professional legal skills should primarily be taught and assessed as part of vocational training. The most significant skills are commonly referred to as the 'DRAIN' skills – legal Drafting, practical legal Research, Advocacy, client Interviewing and Negotiation. These skills are not simply frills. They add value to the training process, and complaints data and research in other jurisdictions point to shortcomings in lawyers skills, not just substantive law, having a specific impact on the delivery of legal services, and on the public's perceptions of lawyers.⁸³

Some skills courses add mediation or mediation advocacy to this list, though these can perhaps be considered more appropriate, in terms of skills development, for continuing education.

There is also some growing recognition that students/trainees need to be better prepared for the extent to which practice, and particularly commercial practice, is becoming more technology-assisted and enabled.⁸⁴ The American and Canadian bars have relatively recently prescribed the need for technological competence as part of their professional standards, and a growing number of law schools are introducing optional subjects in law and technology, in building law apps, and legal design.⁸⁵ This too

⁸¹ See, eg, Hanlie Griesel and Ben Parker, *Graduate Attributes: A Baseline Study on South African Graduates from the Perspective of Employers* (Higher Education South Africa, 2009).

⁸² James R Rest and Darcia Narváez (eds), *Moral Development in the Professions: Psychology and Applied Ethics* (L. Erlbaum Associates, 1994); Donald Nicolson, "'Education, Education, Education": Legal, Moral and Clinical' (2008) 42(2) *The Law Teacher* 145; Steven Vaughan and Emma Oakley, "'Gorilla Exceptions" and the Ethically Apathetic Corporate Lawyer' (2016) 19(1) *Legal Ethics* 50.

⁸³ This is particular true of basic client communication and client care – see generally, eg, Tara Sklar et al, 'Characteristics of Lawyers Who Are Subject to Complaints and Misconduct Findings' (2019) 16(2) *Journal of Empirical Legal Studies* 318; Richard Moorhead, Avrom Sherr and Alan Paterson, 'What Clients Know: Client Perspectives and Legal Competence' (2003) 10(1) *International Journal of the Legal Profession* 5; A Sherr, *Client Care for Lawyers: An Analysis and Guide* (Sweet and Maxwell, 2nd Edition, 1999); V Lewis, 'Complaints against Solicitors: The Complainant's View. Law Society RPPU Research Study No 19' (The Law Society, 1996).

⁸⁴ Richard E Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2nd ed, 2017).

⁸⁵ Discussed, eg, in Kate Galloway et al, 'The Legal Academy's Engagements with Lawtech: Technology Narratives and Archetypes as Drivers of Change' (2019) 1(1) *Law, Technology and Humans* 27; also Richard Susskind, *Provocations and Perspectives* (No 3/2012, 2012) <<http://letr.org.uk/briefing-and-discussion-papers/index.html>>.

is therefore a dimension of skills development that will likely need to be addressed, if not now, then at some point in the not too distant future.

MacCrate Report (1992)

I. Fundamental Lawyering Skills

A. Problem Solving

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

1. Identifying and Diagnosing the Problem
2. Generating Alternative Solutions and Strategies
3. Developing A Plan of Action
4. Implementing the Plan
5. Keeping the Planning Process Open to New Information and New Ideas

B. Legal Analysis and Reasoning

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

1. Identifying and Formulating Legal Issues
2. Formulating Relevant Legal Theories
3. Elaborating Legal Theory
4. Evaluating Legal Theory
5. Criticizing and Synthesizing Legal Argumentation

C. Legal Research

In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

1. Knowledge of the Nature of Legal Rules and Institutions
2. Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research
3. Understanding of the process of Devising and Implementing a Coherent and Effective Research Design

I. Fundamental Lawyering Skills (contd)

D. Factual Investigation

In order to plan, direct, and (where applicable) participate in factual investigation, a lawyer should be familiar with the skills and concepts involved in:

1. Determining the Need for Factual Investigation
2. Planning a Factual Investigation
3. Implementing the Investigative Strategy
4. Memorializing and Organizing Information in an Accessible Form
5. Deciding Whether to Conclude the Process of Fact-Gathering
6. Evaluating the Information That Has Been Gathered

E. Communication

In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

1. Assessing the Perspective of the Recipient of the Communication
2. Using Effective Methods of Communication

F. Counseling

In order to counsel clients about decisions or course of action, a lawyer should be familiar with the skills and concepts involved in:

1. Establishing a Counseling Relationship That Respects The Nature & Bounds of a Lawyer's Role
2. Gathering Information Relevant to the Decision to Be Made
3. Analyzing the Decision to Be Made
4. Counseling the Client About the Decision to Be Made
5. Ascertaining and Implementing the Client's Decision

G. Negotiation

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

1. Preparing for Negotiation
2. Conducting a Negotiation Session
3. Counseling the Client About the Terms Obtained From the Other Side in the Negotiation and Implementing the Client's Decision

II. Fundamental Values of the Profession

A. Provision of Competent Representation

As a member of a profession dedicated to the service of clients, a lawyer should be committed to the values of:

1. Attaining a Level of Competence in One's Own Field of Practice
2. Maintaining a Level of Competence in One's Own Field of Practice
3. Representing Clients in a Competent Manner

B. Striving to Promote Justice, Fairness, and Morality

As a member of a profession that bears special responsibilities for the quality of justice a lawyer should be committed to the values of:

1. Promoting Justice, Fairness, and Morality in One's Own Daily Practice
2. Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them
3. Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice

C. Striving to Improve the Profession

As a member of a self-government profession, a lawyer should be committed to the values of:

1. Participating in Activities Designed to Improve the Profession
2. Assisting in the Training and Preparation of New Lawyers
3. Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, or Disability, and to Rectify the Effects of These Biases

D. Professional Self-Development

As a member of a learned profession, a lawyer should be committed to the values of:

1. Seeking Out and Taking Advantage of Opportunities to Increase His or Her Knowledge and Improve His or Her Skills
2. Selecting and Maintaining Employment That Will Allow the Lawyer to Develop As A Professional and To Pursue His or Her Professional and Personal Goals

5.2.1.2 *The form of regulation (expressing the standards)*

As noted in the Inception Report, there is then the question of how, for regulatory compliance purposes, these elements of competence are expanded upon and framed as standards. The general move in recent years to the use of learning outcomes for this purpose – that is, the adoption of descriptors of what a student should be able to do (with the acquired knowledge and skills) by the end of their degree was also noted in the Inception Report. The advantages of using learning outcomes are generally well-known in educational design practice. These are:

- Outcomes foster a better integration between university education and later vocational and workplace training
- Outcomes provide a clear way of identifying progression between educational stages by clarifying the differences in what the learner is able to know and do by the end of each stage
- Outcomes support teachers and students in making education learner-centred because they focus on what the student is expected to achieve from the learning process
- Outcomes provide a focal point for assessment (as the measure of student achievement) and thereby provide programme designers and teachers with a set of directions for making assessment decisions

There are also some challenges. By themselves outcome statements can be too general and too high level to provide a sufficient regulatory framework by themselves. They generally require additional specification through statements of required knowledge and other written standards. They can otherwise leave too much open to inference, or else become so detailed and extensive as to be unusable.

Work on articulating standards was commenced during the in-country phase of the project. A draft statement of required learning outcomes (LOs) was drafted together with a sample set of ‘prescribed knowledge areas’ (PKAs) – or subject-level statements of prescribed and/or recommended topics.⁸⁶ These were trialled with the Curriculum Working Group and shared with the Bar Council during the second week of the visit. A full set of draft LOs/PKAs was circulated to both the Bar Council and the Working Group for comment on 16 January 2020. The final version of these is contained in Annex 3, and further discussed in section 6.

These general standards are intended as minima. They should be enforceable as such, but are also sufficiently open-textured to give law schools some flexibility both as to the form of implementation, and in terms of the opportunity to exceed the minimum requirements. The LOs need not be adopted verbatim, but should be translated by the law schools into a set of Course Intended Learning Outcomes (CILOs) against which their subject (module) learning outcomes are mapped. Since Maldivian law schools currently prescribe their own course (programme) and subject (module) LOs, in the context of the MQA framework, this will not be an entirely unfamiliar exercise.

⁸⁶ A variant of this approach operates across Australia, where threshold learning outcomes have been adopted as ‘soft regulation’, supporting prescribed subject (knowledge) statements which are enacted as secondary legislation. The proposal for the Maldives is that both LOs and PKAs are implemented as formal regulation.

It is acknowledged that this process involves a move away from using conventional curriculum tools like syllabi and subject teaching outlines. However, it is fair to say that these are not the best way of formulating what needs to be regulated. This is because:

- Syllabi are more than just a list of content and should not be written as such to satisfy a role as regulatory tools; good syllabi are more contextual and more detailed than regulation requires⁸⁷
- They tend, unless regularly reviewed, to freeze curriculum at the time the syllabi were created.⁸⁸ Maintaining syllabi as syllabi in a significantly changing field like law can therefore be a significant cost of regulation
- If not regularly reviewed, they become outdated and redundant
- They may lock knowledge and skills into a specific modular context, thereby restricting creative or novel ways of re-designing and re-imagining curriculum.⁸⁹

⁸⁷ Syllabi are essential to teaching, and may provide important evidence of compliance with regulatory standards, but they are not the standard. Well-constructed syllabi are relational not stand-alone tools: they exist in a relationship with the aims and objectives of a specific degree programme (without that they are decontextualised), and also create relationship between teacher and student. As Altman and Cashin state, “The primary purpose of a syllabus is to communicate to one’s students what the course is about, why the course is taught, where it is going, and what will be required of the students for them to complete the course with a passing grade.” See H.B. Altman, and W.E. Cashin. IDEA paper No. 27: Writing a syllabus, (Kansas State University, Manhattan Center for Faculty Evaluation and Development in Higher Education, 1992); ERIC Document Reproduction Service No. ED 395 539. See also J.M. Slattery & J.F. Carlson. ‘Preparing an effective syllabus: current best practices’, (2005) 53 *College Teaching* 159–64.

⁸⁸ We found evidence of this in the study when it became apparent that some of (some) institutions’ reluctance to share syllabi was that they had not been updated.

⁸⁹ For example, as noted in discussion above, the relatively detailed subject-based approach adopted in England until the 1980s served to keep contract and tort as separate subjects in the curriculum. The relaxation of curriculum thereafter allowed law schools more readily to teach elements of contract and tort together as a module, or across a pair (or more) of modules on (private law) ‘obligations’.

6. Recommendations and risks

The former Chief Justice of Australia, the Hon. Robert French has observed, “curriculum design is a battlefield ... populated by articulate, passionate and persuasive proponents of different and sometimes conflicting visions of what law schools should be for and what they should do”.⁹⁰ As this project has sought to articulate, there is no perfect model, and system transplants do not always do well in ‘foreign’ soil. The project has, therefore, sought to construct a curriculum that has a degree of social and institutional acceptability to the range of stakeholders, that respects the institutional autonomy of legal educators, and reflects the legitimate need of the profession to assure baseline competence. Four important points must be borne in mind in implementing these reforms:

- (a) In terms of curriculum content, the ‘less is more’ principle is critical to enhancing the depth of learning and levels of student engagement. Although the PKAs and indicative credit loadings are described as minima, law schools are discouraged from simply spreading the core out to fill-up the curriculum. Proper attention needs to be paid to teaching principle and technique, to making learning more student-centred (not just delivering legal information), to skills development and the creation of some minimum conception of student choice.
- (b) For the profession, there is the temptation to over-regulate. Here ‘less’ is also ‘more’ – regulation should focus on the basics necessary to assure *competence*, and beyond that it is for the universities and the market to decide. Many practitioners become expert in domains that they never studied at university. There is nothing wrong with that; indeed, the mark of a good legal education is that it equips lawyers with the skills and general understanding to be effective and adaptive in this way. We cannot expect a three or four year degree to equip a practitioner with the knowledge they need for the next forty years.
- (c) Curriculum reform will not solve all the problems of the system. There is at least some evidence of legitimate concerns around admissions standards, assessment practices, and the resourcing and quality assuring of law as a discipline. These require further investigation, and, if need be, regulatory action.
- (d) The law degree, particularly in a mixed legal system like the Maldives, cannot, certainly in three years, prepare students for practice. In the view of the consultant some form of transition to practice programme is desirable. A four year practice-orientated degree could be feasible (as noted in section 5), building on this core curriculum, but that is only one option (discussed later in this section), and its development is a significantly larger project than the present one.

⁹⁰ “Curriculum Change – A Multidimensional Task” (Speech delivered at the University of New South Wales Law School, Sydney, 20 October 2014) 1-2, cited in Carolyn Evans, *The changing environment in the legal profession and legal education: The best of the old world and the new* (2016) 90(6) *Australian Law Journal* 427 at 427.

The aim of this section is to summarise the recommendations flowing from this project, together with brief, explanatory, commentary (in italics). It also highlights what are perceived to be the main implementation risks.

Finally, some additional comments are made with regard to options for the proposed Bar Examination, though this was not strictly within the remit of the report. These are not framed as recommendations as little evidence regarding the Bar Examination has been acquired as part of this project.

6.1 Recommendations

Recommendation 1: clear standards and procedures for a process of professional *approval* and monitoring of law degrees should be put in place by the Bar Council and appropriate training in processes and standards of quality assurance and accreditation in higher education provided to individuals undertaking this work. The process of professional approval and recognition needs to be clearly distinguished in documentation from the *accreditation* of academic programmes conducted by the MQA, and properly reflected in the division of responsibilities and working arrangements between the MQA and the Bar Council.

Commentary: see section 1 for the context, and concerns of the MQA. It is recommended that a two-step process is instituted. First there should be an initial, rigorous process of programme approval. This should be evidenced by written documentation including reference to the objectives of the degree, course learning outcomes, syllabi (including subject learning outcomes, credit weighting, outline teaching programme; forms of assessment and their weighting, and required reading); a statement of learning and information (library) resources; staffing arrangements, including cv's of core teaching staff. Secondly following initial approval, qualifying degrees should be subject to cyclical periodic review (in international practice, the review cycle is normally five years). This might be a lighter touch process, insofar as law schools might not be required to submit all the documentation required for initial review. As a minimum however, they should be obliged to report any material, non-minor, changes to the core curriculum and mode of delivery of the programme, and present student performance and progression data for the period under review. The Bar Council may wish to consider whether it includes teaching observation within the review process. It should be noted that has been a move away from this in QA practice. Unless it is conducted by experts in teaching and learning and assessed against standardised criteria, it can result in judgments that are highly arbitrary and prejudicial. It can also add appreciably to the cost and complexity of the review process. Caution should also be adopted in using generalised (anonymised) student evaluation data to assess programme quality, given the possible variance in quality of evaluation design between institutions, the lack of clear correlation between student evaluations of teaching quality and the effectiveness of instructional processes, and research evidence of gender and other biases in respect of such assessments.⁹¹

⁹¹ The research literature is voluminous and somewhat inconsistent; see, however, Philip C Abrami, Sylvia d'Apollonia and Peter A Cohen, 'Validity of Student Ratings of Instruction: What We Know and What We Do Not.' (1990) 82(2) *Journal of Educational Psychology* 219; Ahmad Al-Issa and Hana Sulieman, 'Student Evaluations of

Recommendation 2: a set of prescribed learning outcomes in respect of the knowledge, skills and attributes required for qualifying law degrees should be approved by the Bar Council of the Maldives, based on the model statement in Annex 3. These LOs should also be considered in assessing claims from overseas law graduates seeking to use their degree to transfer-in to the Maldivian legal profession.

Commentary: the Learning Outcomes (LOs) define the range of knowledge, skills, and professional attributes that graduates of a qualifying law degree should be able to demonstrate at the point of graduation. The specific knowledge for which the achievements specified in LO1 (legal knowledge) are to be attained is contained in the Prescribed Knowledge Areas as defined under Recommendation 3.

There is no equivalent additional specification of skills and attributes required beyond the LOs. The skills and attributes required under LOs 2-5 should be integrated into the teaching and learning of the prescribed knowledge areas. Law schools should be clearly and strongly advised to maintain documentation identifying how and where the learning attributed to the full range of prescribed LOs takes place, and where and how the LOs are assessed.

Recommendation 3: a statement of prescribed knowledge for qualifying law degrees should be approved by the Bar Council of the Maldives, based on the model statement in Annex 3. Graduates of overseas institutions should also be required to demonstrate that they have achieved compliance with the range of PKAs prescribed.

Commentary: The statement of prescribed knowledge sets the parameters of the 'core' qualifying curriculum. It is intended to reduce existing curriculum overload and improve depth of learning on the principle that 'less is more'. Nonetheless the core has expanded through the consultation process, and there is a strong argument against further expansion. There was a clear consensus amongst stakeholders regarding most of the content, particularly with respect to the six basic common law subjects (Contract, Tort, Constitutional Law, Criminal Law, Land and Equity), Principles of Islamic Jurisprudence, Islamic Criminal Law, and Islamic Family Law. There was also strong support amongst stakeholders for Lawyers' Ethics, which is an entirely new subject in the academic curriculum. The PKAs have however sought to acknowledge, in the organisation and weighting of areas that there was debate about the emphasis that should be placed on Equity and the Islamic Law of Inheritance. Additional PKAs in respect of the Maldivian Legal System and Common Law Reasoning have also been prescribed to ensure students develop the relevant foundational knowledge and skills to carry into their other subjects. It is anticipated that both of these areas should be taught early in the degree. Company Law and Jurisprudence were added to the prescribed list following submission of the original draft PKAs and at the behest of the Bar Council. As noted in section 3, there was significant support for Company Law in the stakeholder discussions, but it should be noted that Jurisprudence is more of an outlier, both in terms of international practice, and stakeholder preferences.

Law schools should be expected to demonstrate reference to Maldivian law where practicable and appropriate across the core curriculum. The difficulties of doing so are, however, acknowledged (for the

Teaching: Perceptions and Biasing Factors' (2007) 15(3) *Quality Assurance in Education* 302; Y Fan et al, 'Gender and Cultural Bias in Student Evaluations: Why Representation Matters', (2019) 14(2) *PLOS ONE* e0209749.

reasons discussed in section 4) – and it is likely that the law schools will require support from the profession and the judiciary in achieving this aim: see further Recommendation 11.

The notes to the PKAs expressly permit law schools the liberty to organise topics differently from the structure adopted by the PKAs, This drafting is suggested deliberately to preserve some flexibility and scope for innovative curriculum design by the law schools. The Lawyers’ Ethics and Jurisprudence components could particularly lend themselves to being taught in an integrated way across the curriculum, or taught in some combination of stand alone subject and pervasive teaching. Ethics could also be delivered through an appropriately designed clinical experience.

The requirement that overseas graduates also satisfy the requirements of prescribed knowledge is critical to achieving a consistent baseline for the Maldivian regulatory system. Graduates who are unable to meet all the criteria should be required, where there is minimal compliance, to undertake a local degree, or where there is sufficient (partial) compliance to take ‘top-up’ subjects. The viability of this will depend on law schools having the capacity to deliver ‘top-up’ provision. Some interest in this ‘secondary market’ was expressed by colleges during the project visit.

Recommendation 4: In not less than half of the common law qualifying curriculum, the language of instruction should be English.

Commentary: Concerns regarding English language competence of students were widely expressed by professional stakeholder, both in terms of core communication skills and the use of legal English. This recommendation is geared to improving the situation. It follows too that assessment for those areas should also be in English. See also recommendation 10.

Recommendation 5: Not less than 60% of the assessment for subjects that are substantially comprised of prescribed knowledge as defined in Recommendation 2 shall be assessment under controlled conditions. Assessments under controlled conditions for the profession-prescribed subjects/areas should be marked against a standardized (‘marking on the curve’) or predetermined distribution.

Commentary: As noted there is some significant variation in assessment design across the system. In some instances this may raise concerns with respect to academic integrity, in others it may point to an undue narrowing of assessment outcomes. This recommendation seeks to introduce greater consistency and reliability in respect of ‘core’ knowledge areas, without removing some flexibility over assessment choices. It deliberately does not interfere with institutional discretion regarding the assessment of ‘non-core’ subjects.

The term ‘controlled conditions’ includes any assessment, including (but not limited to) open book and closed book examinations, where human or technological oversight and control of the assessment process provides assessors with a high degree of confidence that the assessment is authentically the work of the individual submitting it.

Standardised marking against an agreed and known distribution will limit the risk/extent of grade inflation. By limiting it to ‘examinations’ in prescribed subjects, this permits other grading modes to be

used where appropriate (eg pure criterion-referenced or effort-based marking) and properly excludes its use in classes where small numbers would make standardization inappropriate.

Recommendation 6: The prescribed curriculum (as defined by recommendations 2 and 3) should comprise not less than 180 credits of a qualifying degree. The overall law component of a qualifying degree (prescribed and non-prescribed) should be not less than 240 credits. The minimum duration of a qualifying degree should continue to be three years.

Commentary: This recommendation supports recommendations 2 and 3 in ensuring that there is a sufficient, consistent, body of learning prescribed across the system, whilst encouraging degree providers to consider ways of opening up the rest of the curriculum for other learning. Based on the norm of 360 credits/3 years or 480 credits/4 years, the prescribed curriculum (LOs + PKAs) must be not less than 50% of the credits for a 3 year, and 37.5% for a 4 year programme of study.

Law schools are not required to allocate specific credit (over and above the 180/240 standards) for the skills and attributes identified in LOs 2-5. Since it is assumed that skills and knowledge acquisition will be integrated (Recommendation 1), it also follows that learning and assessment within subjects that is attributed to achieving LOs 2-5 may count towards the minima.

Note again that the specification deliberately specifies a minimum credit-loading to the core; law schools may exceed that if they consider it appropriate to do so.

Recommendation 7: Consideration should be given by the Bar Council to whether there is a need to publish additional standards or guidelines for approval of degrees to ensure that qualifying degree programmes are adequately resourced, eg, in respect of the appropriate ratio of full-time staff to students; minimum library holdings; normal student contact hours, and adequate access to appropriate information technology.

Commentary: Resource pressures on law schools can be a threat to the quality of programmes. The development of such written standards has been used, eg, by the American Bar Association to define and protect quality standards, though there are also risks that (as in the US) if the quality 'bar' is set too high it will raise the costs (and hence potentially limit the accessibility) of legal education and training for only limited QA gains.

Recommendation 8: law schools should be encouraged further to develop clinical and experiential learning opportunities for their students *within* the curriculum as credit-bearing subjects. At this early stage of development, however, such subjects should be optional rather than required.

Commentary: the value-added of clinical and experiential courses is widely acknowledged and should be encouraged as a way of building students' employability skills and relevant graduate attributes. However, it is also recognised that such courses require specialist skills to design and deliver, and can be highly resource intensive. Consequently, in the context of the range of other changes required by these recommendations, it is suggested that any prescription would be a step too far at this stage.

Recommendation 9: It is for each law school to determine and demonstrate to the satisfaction of the Bar Council how its qualifying course outcomes and curriculum structure satisfy the prescribed learning outcomes and statement of knowledge prescribed.

Commentary: This recommendation serves to reinforce the point that the proposed regulations define outcomes and areas of knowledge rather than subjects. Law schools should be entitled (encouraged even) to find interesting and effective ways or re-packaging content, but the onus is on them, not on the Bar Council, to demonstrate that they have met the full range of requirements.

Recommendation 10: In order to maintain and enhance academic standards within qualifying law degrees, the following admissions criterion should be introduced: all students admitted to a qualifying programme must have obtained an IELTS score⁹² in English at Band 6.0, with not less than 5.5 in any component.

Commentary: the setting of a minimum competence in English language also addresses the concerns regarding teaching and assessing in English identified earlier in this report, and should increase the feasibility of recommendation 4, above. The standard proposed mirrors that adopted by the main Malaysian law schools.⁹³

Recommendation 11: The Bar Council should give due consideration to establishing a standing advisory committee to support the profession and the HEIs in quality enhancement and innovation in legal education. If this recommendation is adopted it is suggested that the committee be chaired by a member of the Bar Council ExCo and the following membership: a representative of each law school offering an approved qualifying degree; one representative each from the judiciary, private practice, the AGO, PGO, and MQA; an expert in professional education;⁹⁴ a lay person representing the consumer interest.

Commentary: Regulation is a blunt instrument and will not by itself be sufficient to create a culture of improvement and innovation. Comments during the in-country phase highlighted a number of actual/potential problems in sustaining a quality culture: (i) minimal history of co-operation and collaboration amongst the law schools; (ii) limited structures for dialogue between the academy and the profession; (iii) the academy's need for professional support in developing local curriculum content; (iv) the limited expertise in educational best practice in the profession; (v) the risk of the regulatory relationship in itself creating a culture of distrust between the academy and the profession.

⁹² Or equivalent.

⁹³ See <https://eduadvisor.my/law/>

⁹⁴ ie with a background in another professional discipline such as medicine or teaching.

Theories of co-regulation highlight the importance of regulatory conversations, and of regulators using informal and collaborative means to encourage regulatory compliance and quality enhancement.⁹⁵ Recent studies of legal education in the US, Canada, the UK and elsewhere have also highlighted the need for a forum for collaboration, or the creation of a shared ‘regulatory space’ for innovation.⁹⁶ This forum offers a starting point.

Recommendation 12: The Bar Council should ensure that its processes comply with established ‘better regulation’ principles. That is: (i) the standards themselves are fair and transparent, (ii) they are applied consistently; (iii) institutions are given reasonable time and opportunity/ies to achieve compliance, (iv) the consequences of non-compliance are known in advance and proportionate; (v) proper reasons are given for approval and review decisions (eg via an audit report with recommendations).

6.2. Key risks and constraints on change

There are multiple points around which this kind of exercise might fail to achieve its objectives. The following, based on the consultant’s prior experience, and assessment of local conditions are likely to be significant pressure points, with an indication of possible solutions.

6.2.1 Old habits...

The risk: lawyers, including legal academics, are often thought of as instinctive conservatives. The flexible and relatively permissive nature of the PKAs and credit requirements may encourage the law schools to undertake minimal change.

The solution: this was seen as a safer more pragmatic approach than imposing large scale and somewhat unproven changes on the system from the outset. Recommendations 1 (the audit and review powers) and 11 to some extent anticipate this risk. The role of the Bar Council should be to monitor, educate, and persuade. The threat of further and more restrictive regulation can be kept in reserve if regulatees show continuing reluctance to comply with the spirit and direction of change.

⁹⁵ See, eg, Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*. (Oxford University Press, 1992); Julia Black, ‘Decentering Regulation: Understanding the Role of Regulation and Self Regulation in a “Post-Regulatory” World.’ in *Current Legal Problems* (Oxford University Press, 1998) 103; Julian Webb and Donald Nicolson, ‘Institutionalising Trust: Ethics and the Responsive Regulation of the Legal Profession’ (1999) 2 *Legal Ethics* 148.

⁹⁶ American Bar Association, *Report and Recommendations: American Bar Association Task Force on Legal Education* (American Bar Association, January 2014) 41
<https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf>; Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada*. (August 2014) 102
<http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf>; Webb et al (n 54); see also Paul Maharg, ‘The Gordian Knot: Regulatory Relationship and Legal Education’ (2017) 4(2) *Asian Journal of Legal Education* 79 (‘The Gordian Knot’).

6.2.2 Curriculum is not the real problem

The risk: the proposed changes to curriculum are made, but many underlying quality problems persist.

The solution: This is both foreseeable and likely because curriculum reform is only part of the solution – and many of the problems (potentially at least) go deeper than curriculum. To illustrate with some concerns highlighted (though not proven) in this project:

- Relative lack of resources in the law faculties
- Over-reliance on part-time and sometimes under-qualified teachers
- Limited oversight of teaching and assessment standards
- Old-fashioned and didactic approach to teaching
- High teaching loads and limited research culture

If these are significant problems then they are structural and not easily resolved. To some extent these risks are anticipated by recommendations 4, 5, 7, 10, and 11. It will be critical that the Bar Council works (i) to *support and engage*, to build a culture of dialogue and collaboration with the law faculties to help address areas of mutual need, and make a case for necessary resources, but is also prepared (ii) to *regulate* and enforce standards. The Bar Council could consider developing a quality rating system as an incentive to offset the sanctions and de-recognition 'stick'.

The extent to which the Bar Examination acts as a quality 'gatekeeper' will also be critical, both insofar as the Examination itself acts as a filter and as an encouragement to law schools to ensure their students are adequately prepared for the next stage. This will be discussed further in the next section.

6.3 Consequential impact on the later stages of training, and some options

Early on in the visit to the Maldives it became apparent that design of the new qualifying degree curriculum could not be viewed totally in isolation from the other educational reforms that are planned in support of the licensing regime for practitioners, namely the construction of both a Bar Examination and a period of supervised training. That work is currently scheduled to follow-on from the design of the qualifying degree curriculum. As noted, designing the academic curriculum in relative isolation from these other elements carries some risks. Consideration needs to be given to the

- Need for and scope of any preparation course for the Bar Examination
- Variants in assessment
- Entry standards for the Bar Examination
- Nature of any workplace training requirement

Getting these right is (even) more critical than the specification of the undergraduate curriculum, since, under most models it is the Bar Examination, not the first degree, that performs the primary gatekeeping function in raising standards and controlling access to the profession.

6.3.1 The Bar Examination

The Legal Profession Act requires the creation of a Bar Examination, but (sensibly) has left what that entails largely to the Bar Council. There are primarily three options for this, though it is also possible to conceive of hybrids involving different elements of these three archetypes:

1. The Examination can be used as an entry assessment to the profession, assessing the knowledge areas and skills prescribed for the qualifying degree. This is essentially the US Bar Examination model.
2. The Examination can be designed as the exit point of a professional training course (the model used by much of the common law world, and some mixed legal systems - eg Australia, Hong Kong, Mauritius, Scotland, Singapore, New Zealand).
3. The examination can be used as an assessment of practice-readiness, where it provides a summative assessment of the professional training process (ie at or near the end of any period of workplace training. This model is relatively uncommon – the German second State Examination performs this function in terms of the point (time) of assessment, but it assesses relatively little in the way of practice skills; the SQE Stage 2 under the new English system comes much closer to this.

Key strengths and weaknesses of each model are displayed in Table 6.1, which also highlights some important variants within each model.

6.3.1.1 Entry Assessment

The best-known example of this is the US Bar Examination. While this is formally conducted at state-level, there is a high degree of co-ordination across state Bar Examiners to achieve a degree of consistency in design and reliability and validity of assessment. This is particularly reflected in the multi-state Bar Exam (MSBE) which has been wholly adopted by 36 states.

The multi-state examination is spread over two days and comprises three components:

- A multiple choice examination involving 200 questions which test *principles of law* spread across six major areas;
- An essay exam which tests candidates' *analytical and written communication* skills;
- A performance test where the candidate has to perform a *standard lawyering task* (mostly preparing a brief) using a case file and provided legal materials

It is thus primarily an assessment of prior knowledge, relying quite substantially on rote memorization, and, in effect, a check only on what has already been learned at university. It has also been criticised for

its failure to assess other core practice skills.⁹⁷ A Testing Task Force⁹⁸ has been set up by the National Conference of Bar Examiners (NCBE), and is expected to report by the end of 2020 on how the bar exam should test entry-level competence in the context of both these concerns and lawyers changing professional roles.

There is currently no required preparation course for the MSBE. In reality, most law schools provide additional bar preparation courses to their students, and a large (private) secondary market in preparation or 'Bar bridging' courses has emerged. Larger law firms sometimes also provide their new hires with coaching for the exam. None of these courses are validated by the NCBE or State Bars.

⁹⁷ For an excellent and reasonably concise overview of the issues, see Stephanie Francis Ward, 'A better bar exam? Law pros weigh in on whether test accurately measures skills required for law practice' *ABA Journal*, 8 January 2020, <http://www.abajournal.com/web/article/building-a-better-bar-exam>

⁹⁸ <https://testingtaskforce.org/>

Model	Strengths	Weaknesses/challenges	Variants
1) Graduate entry assessment	<ul style="list-style-type: none"> • Consistency of assessment • Highly standardised assessment (on US model) • Relatively easy to administer • Does not necessarily require an approved or accredited training course 	<ul style="list-style-type: none"> • US model requires substantial expertise in standardised assessment design. • Usually assesses only knowledge and limited written skills - assessment therefore only weakly correlated with the range of capabilities of a good practitioner 	<ul style="list-style-type: none"> • Whether there needs to be a required preparation course • Whether accompanied or not by any formal period of workplace training
2) Bar course exit point	<ul style="list-style-type: none"> • Should deliver structured and consistent training in required knowledge and skills. • Generally provides better practice-readiness than option (1) • Potentially good assessment validity (provided appropriate range and quality of assessments) 	<ul style="list-style-type: none"> • Courses need to get the right balance and depth – can be too superficial. • Training courses tend to be relatively high cost where there is a significant skills component • Consistency may suffer if there are multiple training providers • Regulatory costs of vocational course accreditation/approval and audit 	<ul style="list-style-type: none"> • Significant variance in course duration and the balance of skills and knowledge taught • Face to face or blended learning • Taught separately from or integrated within an (extended) degree programme • May use centralised or distributed assessment (see 6.3.2)
3) Practice readiness	<ul style="list-style-type: none"> • High validity of assessment (if properly designed) • Only model that can provide a standardised and consistent assessment of workplace learning • Greater onus on firms to properly train their trainees 	<ul style="list-style-type: none"> • Sophisticated assessment tools - relatively difficult and expensive to construct • Greater onus on firms to properly train their trainees • High stakes nature of assessment can make it unpopular with trainees and some practitioners 	<ul style="list-style-type: none"> • Whether there needs to be a required preparation course • Extent of direct training in and assessment of skills

Table 6.1 Bar examination course/assessment models

Bar passage rates vary somewhat state-by-state, depending on the state-prescribed 'cut score',⁹⁹ but in July 2019, in the larger (and therefore statistically more reliable jurisdictions), they tended to be in the range of 69-75%. This represented a significant upturn from 2018 which saw a national pass rate of 54% following a string of declining pass rates over the previous six years, reflecting declining admission standards in US law schools following the global financial crisis.¹⁰⁰

Variants of this model are adopted in a range of other jurisdictions. In India, to take an example of less effective practice, the All India Bar Examination (AIBE) was introduced in 2010. In its earliest iterations, it was plagued with administrative problems (many reflecting the scale of the exercise, with around 20,000 sitting the exam nationally across multiple centres). The assessment itself is a single, three-and-a-half hour, open book, examination. It purports to assess 19 areas of knowledge in that time, by means of multiple-choice questions. In 2020 the published question distribution is:¹⁰¹

AIBE Syllabus 2020: Subjects and Weightage
Below is the subject-wise weightage for AIBE Syllabus as released by BCI:

Subject	No. of Questions (New Syllabus)
Constitutional Law	10
Indian Penal Code	8
Criminal Procedure Code	10
Code of Civil Procedure	10
Evidence Act	8
Alternate Dispute Redressal Including Arbitration Act	4
Family Law	8
Public Interest Litigation	4
Administrative Law	3
Professional Ethics and Cases of Professional Misconduct under BCI Rules	4
Company Law	2
Environmental Law	2
Cyber Law	2
Labour and Industrial Laws	4
Law of Tort including Motor Vehicles Act and Consumer Protection Law	5
Law of Contract, Specific Relief, Property Laws, Negotiable Instrument Act	8
Law Related Taxation	4
Land Acquisition Act	2
Intellectual Property Law	2
Total	100

Table 6.2 : AIBE subject weighting

It is, frankly, doubtful whether the AIBE acts as any kind of realistic assessment of professional competence; there is little testing of applied knowledge and legal reasoning, since many of the questions seem to be geared to finding the correct sections of (named) statutes as quickly as possible

⁹⁹ The average cut score in 2019 was 1350 points out of a possible 2000, ie a pass mark of 67.5%. The second highest cut score nationally of 1440 (72%), in California, held the passage rate in that state to 50.1% - California also has the highest proportion of graduates in the US from non-ABA-accredited law schools permitted to take the bar exam; this also depresses its pass rate.

¹⁰⁰ There is a proven positive correlation between LSAT admission scores and success in the Bar Examination.

¹⁰¹ <https://www.shiksha.com/law/aibe-exam-syllabus>

With a pass rate of around 70% on an extremely low pass mark (40% generally, 35% for certain disadvantaged groups), it seems to operate primarily as a mechanism for some limited form of number control.

In South East Asia, the majority of jurisdictions have centralised bar or 'judicial' examinations (as in Mainland China, Korea, and Taiwan, for example), but these are based more on the civil law model.

6.3.1.2 Professional Legal Training course and assessment

This model has become dominant in the common law world since the late 1970s. Courses however can be appreciably different. For example, the New Zealand Professional Legal Studies Course is 15 weeks long (or part-time equivalent) and essentially skills-based, with limited transactional and substantive law content added. Since 2003, the course has been delivered by two providers nationally, primarily through a mix of face-to-face and online learning. Assessment is also substantially skills-based, using practical exercises.

Australia, Hong Kong, Scotland, and the English Bar, by contrast, all offer courses of around 30-36 weeks duration which involve both the delivery of new knowledge, and substantial direct training in professional skills. Course providers in these jurisdictions are predominantly universities, though in both Australia and England there are private sector providers as well. Blended face-to-face and online learning is used by some of the larger providers in Australia, but most teaching across these jurisdictions remains face-to-face.

A key design variant arises with regard to assessment format. Assessments of professional competence may be organised in a way that is either *distributed* or *centralised*, or sometimes a hybrid of both. Distributed assessment describes systems where, as in the Australian, UK, and current Hong Kong models of vocational training, course providers predominantly design and deliver their own assessments, generally against an approved curriculum and/or set of learning outcomes. Centralised assessment, on the other hand, describes a system of commonly set and marked assessments, which may be either free-standing (ie structurally independent of any course offering, such as the former Law Society Part II Examinations which operated in England until the early 1980s), or embedded in a course, as part of a hybrid system, such as the English Bar Professional Training Course. Singapore also operates a 'centralised' assessment by default, because there is a single (unified) training provider and assessment body.¹⁰²

In Malaysia, the assessment system is distributed and atypically so; graduates of certain recognised universities must either be qualified as a barrister or solicitor in England and Wales, or complete the Certificate in Legal Practice (CLP) examination required by the local Legal Profession Qualifying Board. The latter was originally designed in 1984 as a temporary alternative to support Malaysian students who

¹⁰² See Singapore Institute of Legal Education, 'Preparatory Course leading to Part B of the Singapore Bar Examinations' available at <http://www.sile.edu.sg/part-b>. For a brief survey of the reforms leading up to the introduction of the new course and examination, see A. Godwin and R. W-S. Wu, 'Legal Education, Practice Skills, and Pathways to Admission: A Comparative Analysis of Singapore, Hong Kong and Australia' (2017) 66 *Journal of Legal Education* 212.

were not able to sit for the (then) Bar Finals Examination in England. Both the Singaporean and Malaysian programmes involve a heavily knowledge-based set of assessments with, in the case of the CLP, a traditionally high failure rate. There has been ongoing pressure for a number of years¹⁰³ for the creation of a modernised, but still centralised, Malaysian bar examination, but little of substance has actually happened.

Distributed assessment has, since the 1980s, tended to be more widely adopted in common law systems, reflecting the move in those systems to a greater emphasis on the learning of skills, rather than purely substantive knowledge. A benchmarking study for the Solicitors' Regulation Authority (England and Wales) in 2018 thus reviewed assessment regimes across a sample of 18 jurisdictions worldwide, including both Civil and Common Law systems.¹⁰⁴ While it found that a majority (13) of those considered adopted some form of centralised assessment, all of its distributed exemplars were Common Law systems.¹⁰⁵ The modes of assessment within that (centralised) majority, however, also varied significantly, as Table 6. below (extracted from the study) shows.¹⁰⁶

6.3.1.3 Assessment of Preparation for Practice

As noted, there are few such models in place currently, but the Solicitors Regulation Authority has embarked on an ambitious restructuring of its system for assuring competence which could move the English approach significantly in this direction. The proposed SQE moves away from a system of prescribed courses and towards a model designed around prescribed outcomes and assessments, giving individuals, it is thought, more flexibility in how they prepare for practice. The new assessment regime, which is slated to come into operation no earlier than autumn 2021, involves a two-stage, wholly centralised, assessment of competence, with Stage 1 (SQE1) covering prescribed academic and vocational knowledge areas, and SQE2 assessing professional skills.

The focus of SQE1 thus comprises six broad areas of knowledge (i) Principles of Professional Conduct, Public and Administrative law, and the Legal Systems of England and Wales; (ii) Dispute Resolution in Contract or Tort; (iii) Property Law and Practice; (iv) Commercial and Corporate Law and Practice; (v) Wills and the Administration of Estates and Trusts, and (vi) Criminal Law and Practice. SQE2, by contrast, envisages an integrated assessment of vocational knowledge and skills, built around client interviewing and advising, writing, drafting, advocacy, and negotiation tasks. It is proposed that each skill would be assessed in two different practice areas (drawn from civil litigation, criminal litigation, property law and

¹⁰³ 'Azalina: Govt should not interfere with Malaysian Bar', *The Star*, 19th October 2016, re-published at http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/azalina_govt_should_not_interfere_with_malaysian_bar.html. For background, see S. Thiru, 'A first class legal profession: A Common Bar Course to transform the training of new entrants to the Malaysian legal profession' *Praxis*, July-Sept 2011, re-published online at <http://www.elawyer.com.my/blog/a-first-class-legal-profession-a-common-bar-course-to-transform-the-training-of-new-entrants-to-the-malaysian-legal-profession/>;

¹⁰⁴ Solicitors Regulation Authority, *Qualification in other jurisdictions – international benchmarking* (September 2016) <https://www.sra.org.uk/sra/policy/sqe/research-reports>

¹⁰⁵ It should be noted that the SRA paper erroneously includes New Zealand within the 'centralised' group. In fact the two New Zealand providers of professional legal training operate their own assessments within the framework set by regulations made by the NZ Council of Legal Education.

¹⁰⁶ Note that the wholly blank rows indicate a distributed assessment regime.

practice, wills and probate, the law of business organisations). Candidates would be expected to deal with both contentious and non-contentious areas in the overall course of the assessments.

Jurisdiction	Written exam	Practical skills test	Multiple choice questions	Oral exam/ interview
Australia - New South Wales and Victoria				
Canada - British Columbia				
Canada - Ontario			✓	
France	✓	✓		✓
Germany	✓			
Hong Kong				
Italy	✓			
India	✓			
New Zealand	✓			
Nigeria	✓		✓	
Pakistan				✓
Poland	✓			
Singapore	✓			
Spain	✓			
South Africa	✓			
United Kingdom - Scotland				
United States - California	✓	✓	✓	
United States - New York	✓	✓	✓	

Table 6.3: Centralised assessment design in professional legal training (SRA)

This is, in many respects breaking new ground for a large scale and high stakes assessment regime. SQE1 less so, as it resembles the approach adopted by the US Bar Exam, though it has a somewhat broader reach, and narrower range of assessment modes than the MSBE; a number of concerns have

consequently been raised during the pilot process regarding the depth and quality of assessment questions. SQE2 is more radical, and distinctive because it is anticipated that the assessment will take place during the period of workplace training, and will be assessing skills that trainees will, to a reasonably large extent, be using in the workplace. The SRA 2016 Consultation, commendably, included an 81 page technical annex on the proposed new assessment structure,¹⁰⁷ including topic areas, assessment objectives, and weightings produced by a working group of legal academics, practitioners and technical experts in assessment. However, more details on the organisation of SQE2 specifically are still awaited. Latest estimates for the costs of the SQE suggest between GBP1,100-1,650 for stage 1 and GBP1,900-2,850 for SQE2. This does not include the cost of any preparatory courses.

6.3.2. Summary

It is not feasible for this report to make any clear recommendations regarding the Bar Examination itself. A number of practical observations can however be made.

First, the timeframe for reform set by the legislation is extremely challenging. The lack of transitional arrangements (about which we heard significant adverse comment) and level of uncertainty created for those already in the system is highly unusual, in the experience of this consultant, and arguably inequitable.

Secondly, the law schools currently lack the skills and resources to offer a proper vocational training stage (ie, model (2) above), either as a standalone course or integrated into the law degree. The absence of that stage in turn is a significant constraint on what can be achieved in improving practice standards.

Thirdly, a (model 1) Bar Examination could be introduced as a check on academic standards. This will not remove the gap around practice skills that currently exists. It might assist in better controlling the standards of those entering into practice, as a short term or interim measure, while further more structural changes are made. Whether that end justifies the costs of developing such an interim solution would need to be determined. There is also always the risk that interim solutions become fixed and institutionalised and hence a barrier to further change.

A model (3) assessment is most likely a step too far at this stage of the system's development, particularly given the very genuine doubts about the capacity of the profession to provide a sufficient volume of workplace training and supervision to make such a pathway viable.

Lastly, there is a case for seeking further external guidance, including evaluation of whether a proper vocational stage can be resourced, and what such a course might look like, including the critical practical questions of who might teach and assess it.¹⁰⁸ At a minimum, this would suggest the need to develop a phased plan for the development of vocational training, including possibly some amendment or relaxation of the current implementation schedule.

¹⁰⁷ Solicitors Regulation Authority, *Solicitors Qualifying Examination: Draft Assessment Specification*, October 2016, available at <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#download>

¹⁰⁸ There are issues of capacity, and, some might argue, also possible risks of conflict of interests, which should be considered if the existing law faculties are to be responsible for any vocational training programme.

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Annex 2 – Consultation schedule

Professor Julian Webb, Curriculum Consultant,

08 – 23 December 2019, Male', Maldives

Supported by: UNDP Maldives

WEEK 1

08 December, Sunday		
10:30 – 11:30	BCM Meeting 1: BREIFING MEETING with the Bar Council of the Maldives (Vice-President & Secretary General)	Old Jamaluddin Complex
11:45 – 12:45	MNU Faculty of Law & Islamic Studies	MNU
09 December, Monday		
13:00 – 13:45	Villa College Meeting	Villa College
14:00 – 14:45	IUM Meeting	IUM
10 December, Tuesday		
10:00 – 12:00	Meeting with the National Curriculum WG	UNDP
11 December, Wednesday		
10:00 – 11:00	Meeting with Exco Member & Chair of Subcommittee on legal education and research, Ahmed Muizzu	Muizzu Law Firm, Faaroshige
15:00 – 15:45	Meeting with part-time/visiting faculty Mazlan Rasheed	Old Jamaluddin Complex
16:00 – 16:45	BCM Meeting 2: Meeting with BCM Executive Committee Members	Old Jamaluddin Complex
12 December, Thursday		
	NO MEETINGS	

WEEK 2

15 December, Sunday		
09:00 – 09:45	Maldives Qualifications Authority	MQA
10:00 – 10:45	Meeting with AGO	AGO
11:00 – 11:45	Meeting with PGO	PGO
16 December, Monday		
16:00 – 17:15	Practitioners/Recent Graduates Meetings	UNDP

16 December, Monday		
10:00 – 12:00	Meeting with the National Curriculum WG	UNDP
13:30 – 14:30	Meeting with DJA, JA & Superior Courts	DJA
17 December, Tuesday		
10:00 – 12:00	Meeting with Supreme Court	SC
18 December, Wednesday		
19 December, Thursday		
10:00 – 12:00	Meeting with Curriculum Working Group	UNDP
16:00 – 18:00	BCM Meeting 4: DE-BREIFING MEETING with the Bar Council of the Maldives & UNDP	UNDP

Annex 3 – Revised (final) Statement of LOs/PKAs

PRESCRIBED LEARNING OUTCOMES AND STATEMENT OF PRESCRIBED KNOWLEDGE FOR QUALIFYING LAW DEGREES

**PREPARED FOR
THE BAR COUNCIL OF THE MALDIVES**

Explanatory statement

1. The Learning Outcomes (LOs) and Prescribed Knowledge Areas (PKAs) set out in this Standards Statement represent the minimum learning expected by a graduate of a Bachelor of Laws or Bachelor of Shariah and Law programme recognized by the Bar Council of the Maldives as a qualifying law degree.
2. A qualifying law degree for these purposes is a degree approved by the Bar Council of the Maldives as satisfying the academic stage of education and training for the profession of law.
3. These LOs and PKAs are also adopted as the basis for determining any claim to equivalency in respect of an overseas degree qualification possessed by a graduate who wishes to be permitted to attempt the Bar Examination in the Maldives.
4. This Statement is concerned only with the curriculum content of a qualifying law degree. It makes no reference to admissions standards, staff-student ratios, learning resources, or teaching and assessment methods, all of which are material to determining the quality or suitability of a degree programme.
5. The LOs and PKAs to which this Statement relates are not the totality of the curriculum. Learning in respect of these LOs and PKAs must constitute not less than 240 credits of the qualifying degree programme,¹⁰⁹ based on a minimum three year full-time award (or part-time equivalent), constituting 360 credits of study at levels 5 - 7 of the Maldives National Qualification Framework.

¹⁰⁹ That is, not less than 240 credits of the degree must involve learning and teaching in respect of law subjects and the skills and attributes identified in the LOs. 'Law subjects' for this purpose means the PKAs and may include such additional non-prescribed subjects as necessary to bring the law-specific component of the degree up to the minimum of 240 credits required.

6. As described in this Standards Statement, a qualifying law degree provides a comprehensive foundation in the sources of law and fundamental areas of legal knowledge necessary to satisfy the academic stage of training for the Maldivian legal profession, together with the development of relevant skills and dispositions. It includes the study of a prescribed, substantive core (the PKAs) and provides the flexibility for students to add to these foundational knowledge areas from a range of other legal and non-legal, required and elective, subjects. The qualifying law degree also seeks to develop the higher order intellectual skills consistent with the Maldives Qualification Framework specification for a bachelors degree: these include critical thinking and analysis, problem-solving, research, and oral and written communication skills. The Standards are also drafted with a view to fostering the lifelong commitment to professional learning expected of a competent and ethical legal practitioner.

A. PRESCRIBED LEARNING OUTCOMES

Guidance:

- (a) A law school shall be expected by the Bar Council to maintain a rigorous programme of legal education that prepares its students, upon graduation, for admission to the legal profession and for their effective, responsible and ethical participation in the work of the legal profession.
- (b) A law school shall establish and publish learning outcomes (LOs) designed to achieve these objectives. The LOs shall represent the expected competences achieved by any student graduating from that law school.
- (c) The following prescribed LOs represent the minimum standards of performance or attainment at bachelor's degree level required by the Bar Council of a qualifying degree programme. All recognized providers of qualifying degree programmes are expected to meet or exceed these minimum standards in respect of their programmes.
- (d) A law school is not required to adopt these LOs verbatim, but should be able to satisfy the Bar Council as professional regulator that the LOs are (i) assimilated within the Course Learning Outcomes, (ii) mapped appropriately against Subject (Module) Learning Outcomes in compulsory subjects and (iii) reflected in a range and variety of assessment tasks that are appropriately aligned to subject-level LOs.
- (e) There is no requirement that the LOs be equally weighted in the degree programme.

LO 1: LEGAL KNOWLEDGE

Graduates who have completed a qualifying degree will demonstrate an understanding of a coherent body of knowledge that includes:

- (a) the prescribed areas of legal knowledge, and their underlying principles and concepts
- (b) the broader practical and social contexts within which legal issues arise, and
- (c) the principles and values of justice and of ethical practice in lawyers' roles.

LO 2: THINKING AND REASONING SKILLS

Graduates who have completed a qualifying degree will be able to:

- (a) identify and articulate legal issues,
- (b) apply legal and juristic reasoning to generate appropriate responses to legal issues,
- (c) engage in critical analysis and make a reasoned choice amongst alternatives, and
- (d) think constructively and creatively in order to generate appropriate solutions to legal problems.

LO 3: RESEARCH SKILLS

Graduates who have completed a qualifying degree will be able to:

- (a) research solutions to moderately complex legal problems using primary and secondary sources from Shariah and common law as appropriate
- (b) evaluate and synthesise relevant factual, legal and policy issues in resolving legal problems.

LO 4: COMMUNICATION SKILLS

Graduates who have completed a qualifying degree will be able to:

- (a) communicate effectively for legal purposes in Dhivehi and English
- (b) communicate orally and in writing in ways that are clear, appropriate in form and persuasive for both legal and non-legal audiences

LO 5: ACADEMIC INTEGRITY AND SELF-MANAGEMENT

Graduates who have completed a qualifying degree will be able to:

- (a) demonstrate appropriate standards of academic honesty and integrity
- (b) reflect on their learning, identifying gaps in their own knowledge and skills and when it is necessary to update or acquire new knowledge or capability
- (c) make appropriate use of feedback to support their personal and professional development

B. PRESCRIBED KNOWLEDGE AREAS

Guidance:

1. The course of study for a qualifying degree shall include the study of law subjects for the equivalent of not less than two years out of a three year or four year course of study, (ie, a student must gain not less than 240 credits from the study of legal subjects in a 360 or 480 credit degree programme).
2. Within the study of legal subjects, the following Prescribed Knowledge Areas (PKAs) shall amount to not less than 180 credits of a qualifying degree set at levels 5-7 of the Maldives National Qualification Framework. At least 30 credits from the PKAs should be taught and assessed at level 7.
3. The Prescribed Knowledge Areas may be taught as discrete compulsory modules, as presented in this document. There is however no requirement that individual topics need to be taught in a module covering the area of knowledge in the heading rather than in another suitable module. Where topics are organized in different forms or combinations from those specified below, the onus shall be on the course provider to demonstrate that all required elements of the PKAs are covered in the degree programme.
4. The language of teaching and assessment for not less than half of the credits allocated to the PKAs shall be English. Although language teaching is not included in these PKAs, the Bar Council expects each approved degree provider to make proper provision to support students' abilities to use both legal English and legal Dhivehi.
5. In teaching the Prescribed Knowledge Areas the primary objectives should be to
 - develop students' understanding of underlying legal principles and policy considerations as illustrated through study of key topics within the subject
 - enable students to develop the skills of applied problem-solving within the setting of each subject
 - encourage a spirit of critical enquiry and the facility for independent learning that will enable students to become effective lifelong learners

It is not an objective of these standards to develop in students an encyclopedic but superficial knowledge of each subject and every topic prescribed.
6. Curricula and subject outlines based on these standards will be expected to make reference to relevant and current primary and secondary source material.
7. The major prescribed knowledge areas comprise:
 - Contract
 - Constitutional Law
 - Company Law
 - Criminal Law
 - Islamic Criminal Law
 - Islamic Family Law and Inheritance
 - Introduction to Jurisprudence

- Lawyers Ethics
- Principles of Islamic Jurisprudence
- Property Law
- Torts

The above subjects should in total constitute not less than 168 credits of the degree. It is open to each law school to determine how credits are allocated across the spread of PKAs. In terms of credit loading, however, it is anticipated that Contract Law, Property, and Principles of Islamic Jurisprudence will require double-weighting within the curriculum.

8. The following minor (half) subjects are also included in the prescribed areas, and should in total constitute not less than a further 12 credits of the degree

- Introduction to the Maldivian Legal System
- Common Law Legal Method and Reasoning

9. The prescribed knowledge areas are defined as follows:

I. Contract

- 1) The formation of contracts; the requirements of
 - a) agreement
 - b) consideration
 - c) intention to create legal relations
 - d) certainty
 - e) capacity
- 2) Formalities
- 3) The doctrine of privity
- 4) the content of contracts
 - a) Express terms
 - b) Implied terms
- 5) invalidating factors in contract formation
 - a) Mistake and misrepresentation, and
 - b) Duress and undue influence OR unconscionability
- 6) the termination of contracts
 - a) Termination by breach
 - b) Frustration
- 7) Remedies for breach of contract
 - a) Damages
 - b) Specific performance
 - c) Rescission
 - d) Injunctive relief

II. Constitutional Law

Reference should be made as appropriate to the Constitution of the Republic of the Maldives

- 1) Introduction to Constitutionalism
 - a) Constitutional supremacy
 - b) Parliamentary supremacy
 - c) Islamic constitutionalism
- 2) The Rule of Law
- 3) The Institutions of government and separation of Powers
 - a) The Executive
 - b) The Legislature
 - c) The Judiciary
 - d) Separation of powers doctrine
- 4) The courts and the constitution
 - a) Judicial control over legislation
 - b) Principles of constitutional interpretation
- 5) Amendment of the Constitution
- 6) Introduction to Human Rights under Part II of the Constitution
 - a) Introduction to the concept of human rights and the development of international human rights standards
 - b) Why embed human rights in the Constitution?
 - c) Selected human rights: discussion of at least one example of –
 - i) A protected right (eg, right to life, freedom of expression; freedom of assembly; rights of detainees; right to a fair hearing)
 - ii) A problem area (eg, children's rights; freedom from sexual exploitation; privacy and freedom of conscience; social and economic rights)

III. Company Law

Reference should be made as appropriate to the Companies Act of the Republic of Maldives as currently in force

- 1) Corporate personality: nature, consequences and justifications
- 2) The process of incorporation
- 3) The corporate constitution: Memorandum and Articles of Association
- 4) Management and administration of companies
- 5) Duties and liabilities of directors and officers
 - a) Loyalty
 - b) Duty of good faith
 - c) Duty to act for a proper purpose
 - d) Duty of care
- 6) Share capital and membership
- 7) Introduction to shareholder actions
- 8) Company credit and security arrangements
- 9) Winding up

IV. Criminal Law

Reference should be made as appropriate to the Maldivian Penal Code currently in force

- 1) Introductory matters
 - a) The definition of crime
 - b) The aims of criminal law
 - c) Classification of offences
- 2) The elements of crime
 - a) Actus Reus
 - b) Mens Rea
 - c) Strict liability
- 3) Homicide
 - (a) Murder, including reference to the nature and effect of diminished responsibility
 - (b) Manslaughter
 - (c) Negligent homicide
- 4) Non-fatal offences against the person
 - a) One example from each of i) and ii) –
 - i) Assault, reckless endangerment, threats
 - ii) Rape, sexual assault, criminal sexual contact
- 5) Theft (in outline)
- 6) Selected topics: one from each of (a) and (b) –
 - a) Inchoate offences (attempts, conspiracy, participation in crime)
 - b) General defences (infancy, mistake, automatism, necessity, duress, consent)

V. Islamic Criminal Law

- 1) Introduction:
 - a) Definition of crime, relationship with *ma'siyah* and sin
 - b) Codification of Islamic Criminal Law (eg, brief references to examples of Islamic and hybrid codes with civil or common law, including the position of the Maldivian Penal Code within these approaches)
- 2) Introduction to the categorisation of offences and associated penalties
 - a) *Hudud*
 - b) *Qesas*
 - c) *Ta'azir*
 - d) Classification of punishments (fixed or discretionary)
- 3) Elements of a crime
 - a) Commission of the wrongful act, and causation
 - b) Intention
 - c) *Shubha*
- 4) Homicide (*al-Qatl*)
 - a) Wilful murder

- b) Voluntary manslaughter
- c) Manslaughter by mistake, or intermediate cause
- 5) Theft (*Sariqah*) (in outline)
 - a) Fundamental elements and conditions of theft
 - b) Punishment for theft and its implementation
- 6) A further selected topic chosen from:
 - a) *Hirabah; Zina; Qazf; Sharb al-Khamr; Riddah*
- 7) Reasons for withholding punishment
 - a) Selected topics: one chosen from each of (i) and (ii)–
 - i) Infancy, Insanity, Unconsciousness
 - ii) Coercion, Necessity

VI. Islamic Family and Inheritance Law

References should be included, where applicable, to the Family Law Act 2000 (or any successor legislation)

- 1) Marriage
 - a) The definition and purpose of marriage under *Shariah*
 - b) Who may marry?
 - i) Religious adherence
 - ii) Legal capacity
 - iii) Rules on consanguinity
 - iv) Temporary prohibitions on marriage (eg *iddah*, widowhood)
 - c) The marriage contract
 - i) Offer (*ijab*) and acceptance (*qabul*)
 - ii) Dower (*mahr*)
 - iii) Conditions (*shurut*)
 - d) *Wali*
 - i) Requirement and characteristics of *Wali*
 - ii) Recusal by the *Wali*
 - iii) Substitution of judicial consent
 - e) The requirement for witnesses
 - i) Ruling on witnessing a marriage
 - ii) Effects on the validity of marriage if not correctly witnessed
 - iii) Requirements under Maldivian law for marriage registration and consequences for *urfi* marriages
 - f) Obligations within marriage
 - i) *Nataqah*
 - ii) *Nasyuz*
- 2) Divorce
 - a) Definition of divorce
 - b) Forms of permissible divorce
 - c) Significance of words used for divorce

- d) Conditional divorce
- e) Effect of undue influence or incapacity
- f) Requirement for reasonable maintenance following divorce
- g) Reinstatement of marriage
- 3) Dissolution and judicial annulment
 - a) Conditions for *Faskh*
 - b) *Khul'u* – divorce or *Faskh*?
 - c) Other grounds for judicial annulment
- 4) Introduction to Inheritance Law
 - a) Overview
 - i) Definition of inheritance
 - ii) Historical context and modern role in Maldivian law
 - iii) Wills and bequests in Islamic law
 - b) Introduction to the principles of succession
 - i) The primary Quranic heirs
 - ii) Residual heirs (*asabah*)
 - iii) The types and grounds for blocking inheritance

VII. Introduction to Jurisprudence

The material below may be delivered either by way of a single subject or by integrating the material pervasively across the curriculum, or by some combination of approaches. If a wholly or partly pervasive approach is adopted, the law school must clearly identify to the Bar Council where in the curriculum the Jurisprudence content and outcomes are to be taught and assessed, and how adequate treatment of these topics is ongoingly to be assured. It is also recognized that there may, legitimately, be significantly different ways of organizing the curriculum, and while references below are made primarily to schools of (Western) jurisprudence, the curriculum might equally be organized conceptually or thematically.

- 1) Introduction: why study jurisprudence?
- 2) Natural Law – distinguishing between Conceptual or Substantive and Procedural natural law theories
- 3) Legal Positivism – drawing on examples of both inclusive and exclusive legal positivism
- 4) Dworkin's 'Third Theory' of Law
- 5) Theories of Justice – eg, Plato, Rawls, Nozick.
- 6) Critical accounts – drawing on not less than two of the following:
 - a) Sociological jurisprudence
 - b) Legal Realism
 - c) Critical Legal Studies
 - d) Legal Pluralism
 - e) Systems Theory of Law

VIII. Lawyers Ethics

The material below may be delivered either by way of a single subject or by integrating the material pervasively across the curriculum, or by some combination of approaches. If a wholly or partly pervasive approach is adopted, the law school must clearly identify to the Bar Council where in the curriculum the ethics content and outcomes are to be taught and assessed, and how adequate treatment of these topics is ongoingly to be assured. Ethics might also be taught via or in conjunction with an appropriately designed clinical programme.

- 1) Lawyers and the administration of justice: the democratic values underpinning the lawyer's role, eg -
 - a) The rule of law
 - b) Access to justice (including equality before the law)
 - c) Principles of natural justice
 - d) The independence of the judiciary
- 2) The regulation of lawyers
 - a) The history and organization of the legal profession in the Maldives.
 - b) How lawyers are regulated: the role of the Bar Council.
 - c) Professional responsibility and obligations in the workplace: the code of conduct and informal professional norms
 - d) Professional discipline
- 3) Competing (or complementary?) constructions of the lawyer's ethical role
 - a) The adversarial advocate
 - b) The responsible lawyer
 - c) The moral activist
- 4) Core professional duties¹¹⁰
 - a) The duty to the court, and the administration of justice
 - b) Duties to the client
 - i) Loyalty
 - ii) Confidentiality
 - iii) Competence
 - c) Conflicts of interest
 - i) Where lawyer self-interest and client interests conflict
 - ii) Where concurrent or successive representation of clients creates a conflict between client interests

¹¹⁰ It is expected that not less than half the credits for Lawyers' Ethics should be allocated to learning and teaching in respect of the professional duties.

IX. Property¹¹¹

The focus of this subject should be on the general principles that apply under common law and equity. Reference may be made to the Maldivian Land Act, amendments, and regulations where these provide useful examples of the application of principle.

- 1) The nature and forms of property – real and personal
- 2) Introduction to the system of land ownership and distribution in the Maldives
- 3) Ownership
 - a) Title over goods
 - b) Title over land -
 - i) tenure and estates
 - ii) formalities
- 4) Possession – an overview
 - a) Rights derived from possession
 - b) Competing claims to possession
- 5) The variety of property rights
 - a) Equitable rights over property¹¹² –
 - i) The function of trusts and trusteeship (in outline)
 - ii) equitable assignment and non-assignable rights
 - b) Security rights – mortgages, liens and charges
 - c) Shared rights and obligations –
 - i) co-ownership of land (including strata title)
 - ii) indivisibility and co-ownership of chattels
 - d) Non-possessory rights over land
 - e) Proprietary rights over intangibles
- 6) Creation and transfer of property rights
 - a) Creation and transfer by consent
 - b) Succession on death (in outline)
- 7) Defective transfers
 - a) Defects in formalities
 - i) eg in respect of transfers of land, incompletely constituted trusts
 - b) Innocent purchasers and detrimental reliance

¹¹¹ This set of PKAs reflect a significant shift from past practice, highlighted by responses in the consultation period which questioned the value of a detailed study of common law trusts and (to a lesser extent) land law, and suggestions for a combined subject. It is intended to offer a synoptic view of property law – identifying and comparing basic concepts and principles governing the treatment of realty and personalty, in ways (i) that address the similarities, principled differences and inconsistencies in approach across the field of property law, (ii) that create links in understanding the relationship and co-development of property law and obligations, and (iii) enable teachers to focus on the more (eg commercially) relevant applications.

¹¹² The structure and emphasis here is intended to enable students to understand the underlying significance of the legal vs equitable rights taxonomy, ie, that, while legal property rights relate *directly* to the ‘thing’ itself, equitable rights relate to ‘things’ only indirectly, by attaching to a *persons’ rights to and interests over those ‘things’*. This can be used to explain three core characteristics of trusts law: (i) the extent to which equitable property interests, properly understood, are ‘parasitic’ on, rather than carved out of, the legal estate; (ii) why any underlying property whether personal or real, held under legal or equitable title, can be the subject of an equitable right over it, and (iii) the focus of trusts law on the *trustee’s* rights and duties, since these are properly the subject matter of the trust, rather than the ‘thing’ to which the trustee’s obligations relate.

- i) Real property transactions
 - ii) Personalty and the *nemo dat* rule
- c) Unjust enrichment
- 8) Remedies
 - a) Damages and equitable compensation
 - b) Rectification
 - c) Restitution
 - d) Proprietary remedies (eg constructive trust)
 - e) Trespass to chattels and conversion

X. Principles of Islamic Jurisprudence

- 1) The primary sources and origins of *Shariah*
 - a) The Holy *Qur'an* and the *Sunnah*
 - b) *Madhhab* and the emergence of the four schools of Sunni jurisprudence
 - c) Development of the *usul al-fiqh*
- 2) Secondary sources of *Shariah*
 - a) *Ijma* (consensus)
 - b) *Qiyas* (analogy)
 - c) *Urf* (custom)
 - d) *Ijtihad* (independent reasoning)
- 3) Presumptions and principles aiding interpretation
 - a) *Maslahah* (public interest)
 - b) *Istishab* (presumption of continuity)
 - c) *Istihsan* (juristic preference)
 - d) *Istidlal* (inference)
- 4) *Hukm Shariah* – the five rulings
 - a) *Wajib* and *Fard*
 - b) *Mandub*
 - c) *Mubah*
 - d) *Makrum*
 - e) *Haram*
- 5) Rules in relation to circumstances (*wadia'*)
 - a) Condition (*shart*)
 - b) Cause (*sabab*)
 - c) Preventor (*mani*)
 - d) Permitted / Enforced (*rukhsah, azeemah*)
 - e) Valid / Corrupt / Invalid (*sahih, fasid, batil*)
 - f) In time / Deferred / Repeated (*adaa, qadaa, l'ada*)
- 6) Proof and its classification
 - a) First proof – Al-Kitab
 - i) *Muhukum*
 - ii) *Muthashabih*
 - b) Managing contradiction, and abrogation of rulings
 - i) *Naskh*

- ii) Mansookh
 - c) Second proof – The *Sunnah*: classification of the *Sunnah*
 - d) Forgery and distortion
- 7) Applications of Contemporary *Fiqh*
 - a) Contemporary issues that are unresolved or involve a new application for *Shariah*, in respect, eg, of one or more of
 - i) *Zakat*
 - ii) Biomedicine – eg problem cases of abortion, surrogacy
 - iii) The Muslim diaspora

XI. Tort

- 1) Introduction
 - a) Classification of torts and definitions;
- 2) Aims of tort law
 - a) Attribution of responsibility for harms caused; remediation; deterrence
 - b) The changing nature and role of tort law – eg, no-fault liability schemes; torts and human rights
- 3) Causes of action 1 (intentional torts)
 - a) Trespass to land OR
 - b) Assault and battery
- 4) Causes of action 2 (carelessness): negligence
 - a) Duty of care
 - b) Breach of duty
 - c) Causation and remoteness of damage
 - d) Specific defences
- 5) Causes of action 3 (strict liability)
 - a) *Rylands v Fletcher* OR
 - b) An example of statute-based strict liability
- 6) Vicarious liability
- 7) The evolution of tort law – ‘new’ harms
 - a) Privacy OR
 - b) Economic torts OR
 - c) Environmental (‘toxic’) torts
- 8) General Remedies
 - a) Damages
 - i) Categories of damages
 - ii) Mitigation
 - iii) Assessment of damages in negligence
 - b) Injunctive relief

XII. Introduction to the Maldivian Legal System ¹¹³

- 1) The historical development of the Maldivian legal system
 - a) Customary law and chthonic origins
 - b) Islamic law as an historical and modern (constitutionally-defined) source of law
 - c) The reception of common law
- 2) The classification of law
 - a) Public law
 - b) Civil law
 - c) Criminal law
- 3) The courts
 - a) The Supreme Court
 - b) The High Court
 - c) Trial courts
 - d) The qualification and training of judges
- 4) An outline of the civil justice system
 - a) Civil and commercial procedure
 - b) Alternative dispute resolution
 - c) Access to civil justice
- 5) An outline of the criminal justice system
 - a) The prosecutorial process
 - b) Criminal trial procedure
 - c) Contemporary problems with the criminal justice system

XIII. Common Law Legal Method and Reasoning

- 1) The origins of the common law (in outline)
 - a) Common law as a form of customary law
 - b) Formalization of the English common law; the significance of -
 - i) A centralized hierarchy of courts
 - ii) Law reporting
 - c) The emergence of equity, and its jurisdictional unification with the common law courts
 - d) The development of legislation as (i) a significant and then (ii) a higher source of law than case law
 - e) Colonialism and post-colonialism – modern divergences in the common law tradition
- 2) Precedent
 - a) The binding nature of precedent in the common law – *stare decisis*
 - b) How precedent operates
 - i) The importance of material facts
 - ii) Identifying the *ratio* of a case

¹¹³ PKAs in respect of the formal sources of law are addressed in Principles of Islamic Jurisprudence, and Common Law Legal Method and Reasoning

- iii) *Obiter dicta* and their function in developing legal principles
 - iv) The practice of distinguishing
 - c) Precedent in the Maldivian legal system
- 3) The process of legislation
 - a) Forms of legislation
 - b) The legislative process in the Maldives
 - c) Reading a statute
 - i) The structure and organization of a Maldivian Act
 - ii) The structure and organization of an English Act
- 4) Statutory interpretation
 - a) The Canons of statutory interpretation
 - b) Moves to purposive and teleological construction in the English tradition
 - c) Scope of the duty on judges to 'consider' *Shariah* under Art.142 of the Maldives Constitution
- 5) The tools of legal reasoning
 - a) Reasoning by analogy
 - b) Deductive reasoning
 - c) The role of policy arguments

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Annex 4 – Short biography

Dr Julian Webb is a Professor of Law and Director of the Legal Professions Research Network at Melbourne Law School, Australia. From 2006-14 he was Professor of Legal Education at Warwick University (UK), and Director of the UK Centre for Legal Education, based at Warwick. He has been the lead or co-author of major reviews of legal education and training in Hong Kong (2016-18), the UK (2011-13), and New Zealand (2002). In 2016, he was identified by an International Bar Association study as one of the 15 most cross-cited scholars in the common law world on innovation and change in legal services.

Julian is currently a member of the Singapore Academy of Law's Legal Industry Framework for Training and Education (LIFTED) Global Network, and on the ISA/Research Committee on Sociology of Law Working Group on Comparative Legal Professions. He teaches Disputes and Ethics, Legal Methods and Research, and Legal Theory on the Melbourne JD programme.