

TRANSFORMING LEGAL EDUCATION TEACHING AND LEARNING VIA REMOTE COMMUNICATION TECHNOLOGY

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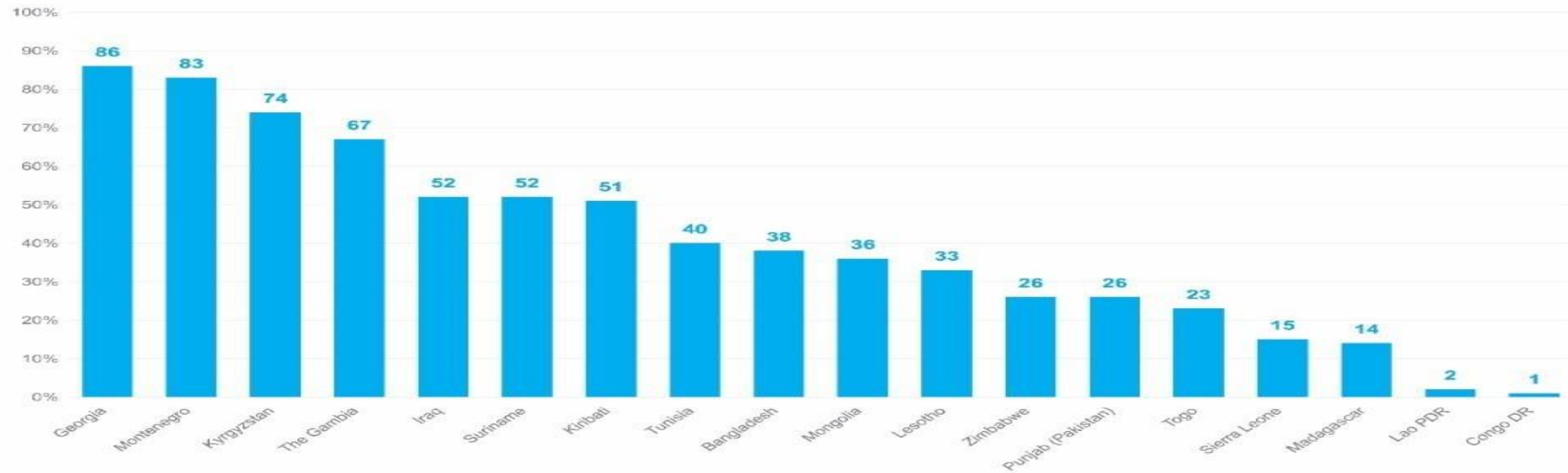
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INTRODUCTION

- Remote Learning has existed for sometime. (Fig. 1 <https://blogs.unicef.org/evidence-for-action/remote-learning-global-pandemic-insights-mics6/>)

Figure 1
Students aged 5-17 years with internet access at home



Source: UNICEF Multiple Indicator Cluster Survey 6 for various countries, 2017-2019

IS THERE A NEED TO EMBRACE REMOTE LEARNING IN THE LEGAL EDUCATION TEACHING?



- Urgent need to imbed and transform legal education teaching via online methods
- IR 4.0
- Pandemic
- Therefore traditional teaching methods must supplemented with online teaching tools
- Therefore Accesible regardless location – becoming a global village in education
- Prior COVID-19 pandemic courts have introduced the e-Filing, e-Service, e-court system, Queue Management System, e-Courts Finance, e-*Lelong*, e-*Jamin*, e-*Jurubahasa*, e-Daily Report, e-*Arahan Amalan*, e-Integrity, Sistem eBench Book, and Case Recording and Transcribing

DIGITALIZATION OF COURTS



- Revolutionization of the courtrooms with live-streaming or broadcasting of the court's proceedings
- Justice is not only seen but heard albeit virtually by stakeholders
- Covid 19 - Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 - Restrictive Movement Control now instrumental for the below amendments
- The recent amendments as mentioned below in Malaysia to adopt remote case hearing :
Courts of Judicature (Amendment) Act 2020 (Act A1621).
 - Subordinate Courts (Amendment) Act 2020 (Act A1622).
 - Subordinate Courts Rules (Amendment) Act 2020 (Act A1623).
 - Rules of Court (Amendment) 2020.
 - See Rules of the Court of Appeal (Amendment) 2020 (P.U.(A) 352), rule 95A.
 - See Rules of the Federal Court (Amendment) 2020 (P.U.(A) 353), rule 127A.



ADVANTAGES OF RCT IN COURTS

- Tan Sri Datuk Zainun Ali, the former Federal Court judge:
 - *the notion of 'natural justice' and 'fair trial' through RCT will promote 'open justice' by virtual and live streaming.*
 - *observed that the substance and procedure in civil appeal remain unchanged and therefore preserving the governance mechanisms of the judiciary*
- Governance: Disclosure and Transparency
- Ethics, Justice and Fairness
- Public Knowledge
- Creation of Awareness not shrouded in secrecy as in the past
- Public Respect
- Confidence



REMOTE COMMUNICATION

- The 'remote communication technology' is defined in section 3 of the CJA, and in section 2 of the SCA and SCRA :
 - as, 'a live video link, a live television link or any other electronic means of communication.'
- Section 15A of the CJA and section 101B of the SCA 1948:
 - the superior courts and the subordinate courts are authorized to conduct the proceedings of any cause or matter, civil or criminal, using the remote communication technology.
- Section 15A(2) of CJA :
- the “**place**” in which the High Court conduct the proceedings of any cause or matter, civil or criminal, through a remote communication technology shall be deemed to be conducted within the local jurisdiction of such High Court.
 - 'place' is defined in section 15A(4) to include cyberspace, virtual place or virtual space.
- Section 101B of the SCA :
 - the court proceedings carried out by the remote communication technology shall be deemed to be conducted within the local jurisdiction of the court as assigned in sections 56 or 76 .
 - S101B(4) of SCA.: 'place' in this section includes cyberspace, virtual place or virtual space.
- The above amendments however do not affect evidence by child witness by means of a live link under the Evidence of Child Witness Act 2007 and evidence given by witnesses protected under the Criminal Procedure Code and the Evidence Act 1950.

LAWS ALLOWING MALAYSIAN COURTS TO USE RCT



- Section 69 of the CJA 1964:
 - The Court of Appeal to receive further evidence by **oral examination** in court through a **remote communication technology**.
- Section 17B of the CJA and section 107A of the SCA:
 - Chief Justice may, after consulting the President of the Court of Appeal or the Chief Judge, issue practice directions for the purpose of carrying into effect the above new amendments.
- Section 4 of the Subordinate Courts Rules Act :
 - The Rules of Court may be made for regulating and prescribing the procedure with respect to the hearing of any matter or proceeding through **a remote communication technology**

THE RULES OF COURT 2012 (ROC 2012 AMENDED.



- The term 'remote communication technology' inserted after the definition of 'sign' in Order 1 rule 4 bears the same meaning assigned to it under the CJA, SCA and SCRA.
- The court proceedings through remote communication technology are specifically contained in Order 33A.:
 - Order 33A rule 2 :
 - the Court or Registrar is empowered to direct any cause or matter to be heard or any proceeding to be conducted remotely, either upon its own motion or by application of any party to a proceeding.
 - Order 33A rule 3 :
 - that any person, witness or prisoner as witness or party to any proceedings is allowed to attend the court and / or give evidence in those proceedings by means of remote communication technology. In cases of a person attending, a witness giving evidence and a prisoner as a witness or a party, attending or giving evidence, the Court or Registrar shall be satisfied that sufficient administrative and technical facilities and arrangements are made.
 - Order 33A rule 4 :
 - the Court or Registrar is also conferred with the power to revoke, suspend or vary its earlier direction made under rule 2, in the following circumstances: (a) where remote communication technology stops working and the proceedings would be unreasonable delayed waiting until a working system becomes available; (b) it is necessary for the Court or Registrar to do so to comply with its duty to ensure that the proceedings are conducted fairly to the parties in the proceeding; (c) there has been a material change in the circumstances after the Court or Registrar has made an order; or (d) it is necessary in the interests of justice to do so.
 - Order 33A rule 5:
 - states that in ensuring open justice to remain available while the Court is working towards a shift to the remote hearings, the Court or Registrar may direct the proceedings to be broadcasted to make it available to the public. The proceedings may also be recorded for the Court or Registrar to keep an audio-visual record of the proceedings.
- Order 34 rule 2(2)(u):
 - empowers the court, at pre-trial case management, to give the appropriate orders and directions regarding the manner in which the proceedings are to be conducted. This would include proceedings by way of remote technology communication.
- Order 42 rules 1 and 1A: for judgment or order to be pronounced or delivered in the remote hearings and pursuant to rule 5 the judgment or order pronounced or delivered in the remote hearings shall be reflected in the judgment or order

SERVICE OF WRIT

- Order 10 rule 1(1), RC 2012 allow for service to be effected by means of electronic communication in accordance with any practice direction issued for that purpose.
- Order 62 rule 6(1)(cc) provides for service of other documents also by means of electronic communication.
 - The above order provides that ordinary service of any document, not being a document which is required to be personally served, may be affected by means of electronic communication.
- Order 63A rule 17 provides that the Court's Electronic Filing System (EFS) can also be used as service of documents between the parties' solicitors.
 - A party may still affect the service through electronic filing system though the service required is that of personal service, provided that the other party to be served has consented to it.
 - Rule 17(3):
 - the service is deemed effected on the date and at the time that the first part of the electronic transmission is received in the Court's computer system.
 - Rule 17(4) :
 - the record of the service is issued by the Court's computer system or the service bureau as evidence of the service, the person serving the document may provide this record to the person being served the document .
 - rule 17(5) :
 - the proof of service may be filed through the electronic filing service.
- Order 70 rule 10(1A) :
 - For service of the writ in an action in rem or a warrant of arrest to be effected by affixing the writ or warrant outside any suitable part of the ship's superstructure, and followed immediately with electronic communication by email or other means to the owners/demised charterers of the ship.



POWER OF CHIEF JUSTICE IN RCT



- Order 92 Rule 3B:
- The power of the Chief Justice and Chief Judge to issue practice direction is contained in Order 92 rule 3B.
 - Rule 3B (1): ‘The Chief Justice after consulting the Chief Judge may issue such practice directions as may be necessary—
 - (a) for the better carrying out or giving effect to the provisions of these Rules; or
 - (b) if the Chief Justice is of the opinion that the circumstances warrant that it is necessary in the interest of the dispensation of justice, public safety, public security, public health or propriety or for other sufficient reason to do so.’
 - Rule 3B (2): The Chief Judge after consulting the Chief Justice may issue such practice directions as may be necessary for the better carrying out or giving effect to the provisions of these Rules.’

TEACHING AND LEARNING OF LEGAL EDUCATION IN MALAYSIA



- Currently there are approximately 20 public and private universities and colleges offering law programmes such as Diploma of Laws, Bachelor of Laws, Master of Laws and Doctor of Philosophy in Law
- Teaching and learning in higher institutions today:
 - Combination of a hybrid of conventional and digital learning in the last decade.
- Reasons
 - new generation of learners consists of Generation Z and Generation Alpha
 - tech-savvy learners to date.
 - Traits of these youngsters on -the impact of technology on their learning development - iPads, laptops and mobile phones - introduced early.
 - Heavy reliance on technology
 - Source of entertainment or finding information
- Law lecturers in higher education institutions in Malaysia have been implementing various innovative teaching and learning methods in addition to the recommended methods by the MQA which includes: clinical legal education, mooting, blended learning, neuro-linguistic programming, gamification and augmented reality learning.
- Law lecturers to bring digital experience into the classroom to supplement the existing teaching and learning practices as to be in line with the advancement in technology to keep up with the tech savvy students .

JUSTICE DELAYED IS JUSTICE DENIED



- Legal education regulatory bodies to embrace remote communication technology:
- Now there is a need to advance the adoption of the latest remote communication technology (RCT) during the current COVID-19 pandemic and beyond.
- The application of RCT includes, but not limited to live video link, a live television link or any other electronic means of communication.
- Reluctance:
 - Despite the plethora of RCT available in the market, the legal fraternity was one of the industries that was unprepared for remote communication technology (RCT).
 - RCT is now ever more a necessity to provide access to the legal field of practice and education.
- In the past, the RCT has been argued on the basis that it was a prospect to rejuvenate and revolutionize legal education.
- Legal services is a very old profession lasting for many decades and for the first time the development of technology has changed the legal service value network.
- With the RCT as a disruptive innovation, the network is facing a radical change like work.
- Some may perceive RCT as a disruptive entrant however it is a compelling need especially during pandemic times.

CHALLENGES : EDUCATION IN THE NEW NORMAL



- Whether the educators are prepared for this change ? General gap still exists
- Whether the regulatory bodies are prepared for the change?
 - Covid blessing in disguise.....to the tech world
 - The COVID-19 pandemic has shown that real changes through RCT in this digital age are timely, relevant, and imminent. In Malaysia, the Prevention of Infectious Diseases Act 1988 was invoked thereby halting and confining the daily practice in courts.
 - Similarly, in legal education, this innovation included digital teaching methods and resources – ms teams, zoom, google hang out.
- Expectation in RCT:
 - educators are expected to be thoughtful, insightful, and engage in a far-sighted restructuring of legal education and they have to supersede the past models of the conservative face-to-face teaching and learning of legal education.
 - Educators are today the avatars of law in the digital age of RCT.
- Possible?:
 - Only if regulatory bodies are ready and willing to accept that legal education today has to be free from the customs and conventions, ethos, and certification concerning qualifying degrees.
- Free from ancient teaching shackles:
 - Law schools educators must move from the fear and conservatism in legal education.

CHALLENGES: COURTS



- Not without challenges, hence the court or the registrar has the power to revoke, suspend or vary the direction of it if there has been a delay due to technical problems, unfair to all parties, material change in circumstance and it is in the interest of justice.
- However in the case of *SS Precast Sdn Bhd v Serba Dinamik Group Bhd & Ors*:
 - High Court by way of obiter stated that both parties' consent had not be the deciding factor for the use of technology (video-conferencing).
 - Not only the Order 32 rules 10 and 11 were considered but articles 4 and 5 of the Federal Constitution were deemed relevant to the principle of 'overriding interest of justice' and therefore the courts cannot deny one person's right to the fundamental right to access to justice.
- In *Liziz Plantation v Liew Ah Yong*"
 - Trial judge dismissed the transfer application and allowed for RCT
 - *'with the experience gained in using remote communication technology in dealing with the movement control order, conditional movement control order and the recovery movement control order that is extant and which were necessitated by the COVID-19 pandemic, the physical location of anyone litigant or witness and the issue of having to physically travel to any court has become very much less important.'* [2020] 10 CLJ 94.
 - This statement reflected that judges are not prepared to be left behind in the advancement of technology and are ready and willing to embrace various internet platforms such as 'Zoom', 'Skype' and 'Microsoft Teams' as stated in the above decision.
- The fundamental principle of human rights is justice and about public's access to court proceedings through live streaming which further enhances the freedom of information principle and therefore, reinforcing the adage that justice must be 'seen' to be done..

DELAYED JUSTICE IS INJUSTICE

- In European courts, one of the pertinent issues raised was the governance element of ethical principle challenges in the judiciaries.
 - The legal experts should be cognisant on legal and ethical challenges concerning safeguarding data and information systems about RCT.
 - An Ethical Framework Code for Artificial Intelligence Network must be implemented
 - A responsible use of RCT must comply with the Protection of Personal Data Act 2010.
 - The five principles in the final document are:
 - (i) Respect for fundamental human rights ;
 - (ii) Non-discrimination;
 - (iii) Quality and security;
 - (iv) Transparency, impartiality and fairness and
 - (v) Under user control.
- See <https://www.unodc.org/dohadeclaration/en/news/2020/12/it-and-ai-new-challenges-for-judiciaries.html>






“IMAGINE THERE'S NO COUNTRIES IT ISN'T HARD TO DO”

JOHN LENNON'S “IMAGINE”

- In a globalized world, the borders are fragiley invisible :
 - RCT allows education to be a world tour and allows these students to gain knowledge and experience that develops relationships that supersedes professional goals.
- In RCT, educators become all-rounder from a coach to a classmate to a friend to a colleague.
- The use of digital technology brings learning possible through time and space beyond an unimaginable vision.
- The quantum of technology in legal education during RCT will prepare future law graduates to embrace any untoward possibilities that may arise due to a pandemic at their workplace and therefore they will be more equipped just like graduates from the technical fields to be able to transfer their reasoning skills and knowledge in decision making through digital technology with ease.
- RCT as an innovation today is more pronounced and future acceleration of outsourcing to AI. within the legal network of the judiciary is foreseeable.



CONCLUSION : ACCLIMATIZATION OF THE DIGITAL AGE WITHIN THE MALAYSIAN LEGAL FRAMEWORK

- Imperative for the legal profession regulatory bodies, the Legal Profession Qualifying Board and the Malaysian Bar, to stress not only the conventional synchronous face-to-face learning on campus but also asynchronous learning via the online or remote platform.
- The law faculties and law schools must also embrace the disruptive force of the technology and thereby prepare their law students to embrace technology and to churn technology savvy law graduates for their future employability.
- Law schools must embrace and incorporate the remote communication technology in their curriculums to make the students familiar and accustomed to this new innovation in the legal practice.
- What is emphasized here in that the virtual learning experience vide the remote communication technology must be allowed to continue beyond the COVID-19 period as it is now an important tool for the future workforce.
- Tan Sri Datuk Seri Panglima Richard Malanjum, the former Chief Justice of Malaysia, at the Opening of the Legal Year 2019:
 - ***‘[T]he legal profession must embrace technology. There is no option. It is coming soon to the legal profession. Adapt or be dropped... unless the Law schools start preparing their law graduates for the industry, they may end up in the unemployment queue’.***
 - Speech by the former Chief Justice of Malaysia Tan Sri Datuk Seri Panglima Richard Malanjum at the Opening of the Legal Year 2019 held at The Putrajaya Marriott Hotel, Putrajaya, 11 January 2019 [http://www.kehakiman.gov.my/sites/default/files/OLY%202019%20CJ%27s%20Speech%20-%20Final 0.pdf](http://www.kehakiman.gov.my/sites/default/files/OLY%202019%20CJ%27s%20Speech%20-%20Final%200.pdf) , assessed on 7 November 2019.