SUDAN-COUNTRY REPORT

by

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A faculty of law cannot teach all branches of law. It would put a heavy burden on the students. A selection has to be made. Some subjects are to be taught and others are to be learnt later in life after graduation. That selection must be based on the objectives of legal education.

1. Intellectual Property as Part of a Subject Prescribed for LL.B. Degree

The University of Khartoum Faculty of Law was established in 1936 to offer a four-year LL.B. degree. This duration has been one of the problematic areas in legal education and, in the past, periods of five and three years were attempted. But whatever is the duration a choice of subjects has to be made. In selecting the subjects to be taught, our main objective in providing legal education was, and still is, to prepare law students for entry into the legal profession, the Judiciary and the Bar. A branch of law which is rarely applied in the courts because it is either inadequately covered or not covered at all in the primary sources of law (i.e. legislation and judicial decisions) has little or no chance in finding a place in the curriculum. Such is the fate of intellectual property at Khartoum University Faculty of Law.

The Trade Marks Ordinance 1931 (now the Trade Marks Act 1969) was the only Sudan legislation in the field of intellectual property when the Faculty of Law was established in 1936. Other branches of intellectual property law appeared in 1970s: the Patents Act 1971; the Industrial Designs Act 1974; and the Copyright Protection Act 1974 (now the Copyright and Neighbouring Rights Protection Act 1996). Given this late development, it is understandable that intellectual property law is conspicuous by its exclusion from LL.B. course.

But this does not mean that it is completely ignored. Intellectual property poses problems within some of the LL.B. subjects and in this context a brief explanation of the nature of intellectual property is in order. An example is the conflict of laws which arises from the existence of different rules of private law and so assumes knowledge of private law. I know personally from teaching this subject for over a quarter of a century that intellectual property arises in two main areas. It arises in the determination of the place where property is situated. Property divides into immovable and movable, and the latter sub–divides into tangible and intangible, such as copyright and patents. It arises, moreover, in the choice of law rules governing the capacity of a party to make a contract

as in the English case, *Bodley Head Ltd.* v. *Flegon*, a copyright case which raised the question whether a Russian author, Alexander Solzhenistyn, had capacity to make a contract with a Swiss lawyer for the publication of his literary works outside Russia.

A new position in the teaching of intellectual property was reached when, during the academic year 2000-2001, the Faculty of Law incorporated an introductory course on intellectual property as part of the law of personal property. Specifically, this introductory course comprises the definition and forms of intellectual property; the economic justifications for the protection of intellectual property; the nature and subject matter of patents; conditions of patentability; ubiquity and exhaustion of intellectual property rights; and the nature, function and registration of trade marks. This recent practice is the greatest extent to which intellectual property is taught as part of LL.B. degree course. The instructor for this course is Mr. El Tayeb Murkaz Ali.

2. Intellectual Property as a Distinct Subject for LL.M. or Ph.D. degree

At the postgraduate level, intellectual property finds a place as a distinct subject for the LL.M. and Ph.D. degrees.

(i) Course Component and Duration

Our LL.M. degree has taught and research components. In the first year students attend courses and do written examinations on subjects selected by the Faculty. The inclusion of intellectual property in the LL.M. taught component started in 1987. In that year, WIPO funded two short research visits to Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law in Munich.[1] These were followed in 1990, by another short visit to the Library of Congress and American universities in Washington, D.C. I must record that these visits were my first acquaintances with the intellectual property law and without them, the steady progress we have been making in the teaching of this subject would have been difficult or impossible. The inclusion of intellectual property means that the objectives of legal education now include the teaching of subjects necessary for economic and cultural development.

The research component is a dissertation in partial fulfillment for the requirements of LL.M. degree. It takes about a year but this period is usually extended. A student is free to choose *any* subject even if it has not been covered in the taught course. Topics within intellectual property have been researched and others are in progress.

[1] I was one of the two lecturers who benefited from these visits.

The Ph.D. is entirely by research. Currently, two candidates for a Ph.D. degree are writing on some aspects of intellectual property.

(ii) Intellectual Property Course Contents

The course on intellectual property covers two branches only: copyright and patents. Both are taught by one lecturer because of shortage of staff. By contrast, in the United States where staff availability is not a constraint, each lecturer devotes himself to one branch of intellectual property, such as copyright and patents.

Essentially, the copyright course comprises the nature and historical development of copyright, including the impact of technology and other factors; the link between the Sudan and the author, creator or work; the subject matter of copyright; the rights conferred by copyright; ownership of copyright, its duration and limitations; transfer of copyright; registration of works and contracts; protection of neighbouring rights; and infringement and remedies. Additionally, the international protection of copyright is discussed with reference to the Berne Convention for the Protection of Literary and Artistic Works 1886 and the Universal Copyright Convention 1952. It is proposed to include the TRIPS Agreement when teaching materials become available.

As to patents, the topics include the economic aspects; subject matter; requirements of patentability; the grant of patents; examination of patent application; issue, registration and publication of patents; patent rights and their limitations; assignment and licensing of patent rights; expiry of protection; and infringement and remedies.

3. Teaching Materials

Like other law faculties, the University of Khartoum, Faculty of Law, uses materials that may be classified as primary and secondary. Our collection of materials on intellectual property is, however, modest. The primary materials comprise the Patents Act 1971; the Copyright and Neighbouring Rights Protection Act 1996; the Berne Convention for the Protection of Literary and Artistic Works 1886; the Universal Copyright Convention 1952 and the TRIPS Agreement 1994.

The secondary sources consist of Akolda M. Tier's three articles: *Protection of Copyright under Sudanese Law*, 6 Arab L.Q. 161 (1991); *The Rights Conferred by the Sudanese Copyright Protection Act 1974*, 38 J. Indian L. Inst. 331 (1996); and *The Sudan's Copyright and Neighbouring Rights Protection Act 1996: An Evaluation*, 32 Copyright Bulletin 43 (UNESCO 1998).

Since intellectual property law is semi-international, the locally available literature on intellectual property is supplemented by a few English books, namely: Cornish, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (1989); Phillips, *Introduction to Intellectual Property Law* (1986); WIPO, *Background Reading Materials on Intellectual Property* (1988); Copinger and Skone James, *Copyright* (1971); and Blanco White, *Patents for Inventions* (1974).

It may be well to add that the University of Khartoum, Faculty of Law, does not subscribe to specialized journals such as the European Intellectual Property Review (EIPR). Moreover, no materials are available in the form of electronic publishing. Clearly, our teaching materials are at once out of date and limited. Consequently, I rely very heavily on law review articles which I photocopied during my visits to the US Library of Congress, September 3 to 13, 1990 and to Max-Planck-Institute at Munich from May to August 2000.

4. Methodology

The paucity of teaching materials limits choice of methodology of teaching, i.e. Socratic or lecture method. Traditionally, we follow the latter and intellectual property law is no exception. The success of Socratic method depends on the use of casebooks. Above all, it requires a great deal of preparation and active participation on the part of students who are not yet acquainted with the subject. And a student's knowledge based on analysis of a few selected cases and statutes compiled in a single casebook does not, in our opinion, wholly extend to all the principles of law that can be dealt with in a lecture. Hence, there are legitimate grounds for considering the Socratic method poor teaching.

5. Seminars, Workshops and Research Visits to Foreign Universities

WIPO has sponsored non-formal education activities, including seminars and workshops for lawyers, artists and the public generally. Admittedly, seminars and workshops of a few days duration cannot cover many aspects of intellectual property but they have brought the subject to a wide audience. UNESCO has also organized a workshop on copyright.

Research visits to foreign universities which teach intellectual property law are intended primarily for the academic staff as a training for trainers.

6. Conclusion

It is a remarkable thing that intellectual property has, through international cooperation, made a radical transition from being a part of another taught course—an undoubtedly low status—to a distinct subject in its own right. However, a number of constraints still remain, including limited and outdated textbooks and the shortage of academic staff which results from the brain drain. The latter problem can be solved by creating a chair of intellectual property law. In fact, UNESCO has established copyright chairs in certain universities. Is it possible for WIPO to emulate UNESCO in this regard?