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### Luke Nottage & Makoto Ibusuki (eds), *Comparing Online Legal Education: Past, Present and Future* (Intersentia, 2023)

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## **Comparing Online Legal Education: Past, Present and Future**

edited by Luke Nottage and Makoto Ibusuki, Cambridge, Intersentia, 2023, 350 pp.,  
ISSN 978-1-839-70396-6

We are confident that the originators of the term “Gen Z” did not anticipate that this generation would spend their university years on Zoom during the COVID-19 pandemic. Now, with COVID-19 having become endemic, what lessons for the future of legal education can we draw from the experiences of those who taught online during the last four years? Luke Nottage and Makoto Ibusuki set out to answer this in their book “Comparing Online Legal Education: Past, Present and Future”.

The book comprises of two sections. The first is the General Report by Nottage and Ibusuki, while the second section contains the jurisdiction reports contributed by the national rapporteurs (collectively “the Special Reports”).

In the General Report, Nottage and Ibusuki set out the objectives and scope of the study – namely, to compare, across fairly representative jurisdictions, the state of online legal education at university level as well as continuing education for the legal profession, before, during and after the pandemic. They then examine the interplay of factors such as the nature and scope of legal professions, funding structures, the information and communications technology (ICT) infrastructure, and the impact of the COVID-19 pandemic, before providing summaries on each jurisdiction.

At least three observations from the General Report may be useful for educators and policymakers looking at the issue of online legal education.

First, identifying a jurisdiction’s gatekeeper is a useful way to understand that jurisdiction’s legal profession. The term “gatekeeper” is used by Nottage and Ibusuki to refer to the institution that determines the persons who qualify and can be licensed to practise law (p.6). Examples include the government, universities, the market, the legal profession itself, or a combination thereof.

Secondly, there is an intrinsic connection between the size and nature of the legal profession, on the one hand, and university legal education, on the other hand, in each jurisdiction. In particular, the size of the legal profession could influence whether universities are prepared to experiment with online education, should the budget permit it (p.9).

Thirdly, the size of the foreign student cohort at a law school can have varied effects on both conventional and online legal education. One positive effect is in encouraging greater faculty adoption of ICT, such as mandating that lectures be recorded, which allows foreign students to review the material if they cannot follow the discussions in class. On the other hand, foreign students might not engage well in class discussions held over video-conferencing if they are unable to pick up on social cues in the virtual setting (p.11).

In the second section of the book the national rapporteurs get into the meat of it, contributing detailed Special Reports across 13 jurisdictions. These reports span larger, developed economies like Australia and Canada to smaller states like Brunei, Singapore and the Seychelles. The editors are to be commended for achieving a broad coverage of jurisdictions. The reports show that, prior to the COVID-19 pandemic, there were only piecemeal offerings of online legal education at university level. Nottage and Ibusuki believe that the reasons for this stem from a traditional focus on research in universities as well as the emphasis placed on in-person classes (and in civil law traditions, on oral examinations) (p.32). Further, they suggest that student cohort size and composition also played a part in this general reticence, as account had to be taken of non-native language speakers when experimenting with online legal education (p.32).

By early 2020, practically all jurisdictions had moved to online legal education in response to COVID-19. This transition entailed different challenges depending on the jurisdiction, including but not limited to ICT infrastructure issues and the general ebb and flow of COVID-19 infections. Each report bears reading but we especially mention Syed Imad-ud-Din Asad's sobering report on Pakistan.

Asad noted that because of mandatory requirements in Pakistan for universities to conduct only physical classes, it was unclear whether online legal education was even permissible during the COVID-19 pandemic (p.224). The relevant regulator also did not issue any public statement to clarify the application of the mandatory requirements. As a result, legal education there almost ground to a halt during the pandemic (p.224).

This seems to contain instructive lessons for policymakers and educators. Regulators should stand ready to adapt or amend (at least on a temporary basis) well-intentioned rules aimed at maintaining the high standards of legal education, when confronted with unforeseen eventualities that cause the initial regulatory intent to be frustrated. Educators, too, must play their part in being gatekeepers (to borrow the term) by ensuring that standards do not drop to a level warranting regulatory intervention.

From the Special Reports we also note that, after COVID-19 became endemic, most jurisdictions returned to in-person classes in part, with options for hybrid delivery. That said, we do not think this indicates a step back to the pre-COVID-19 era; as Nottage and Ibusuki observe, the "discussion has continued about the pros and cons of different types of online legal education, no longer limited to a few pioneering professors and practitioners" (p.33).

There are several issues brought up in the General Report and Special Reports that could benefit from further examination as online legal education continues to be explored and refined. We offer two examples for consideration: integrity and access to electronic resources.

The question of integrity is one which legal educators and gatekeepers must continue to confront as they train the next generation of the legal profession. It is an "inescapable truth that being a lawyer entails a choice to live by [the] values of

honesty, integrity, and service, which transcend our individual careers, cases or examinations” (Sundaresh Menon, Opening of the Legal Year 2023, Singapore). Integrity was briefly discussed in the reports on Australia and on Hong Kong. In the former report, it was observed that the debate on online legal education and integrity in Australia remains a live one (pp.50–51). Over in Hong Kong, it has been contended that online remote proctoring should be able to deal with the issue of integrity in electronic exams, and the rapporteurs there advocate for online modes of assessments to be used more frequently to prevent the furthering of a misalignment between university written examinations and actual legal practice (p.153). If so, we must surely be far from the end of this journey, judging from the unhappy experience in Singapore where several instances of cheating by law graduates in the Bar qualifying examinations – held virtually during the pandemic – shook the profession and prompted urgent introspection (see Sundaresh Menon, Mass Call Address 2022, Singapore). A further empirical study into this question across various jurisdictions would aid in determining how great a problem this currently is and may be in the future.

The issue of access to electronic resources appears to be a critical one as well. Accessing the substantive content of law is an important factor when training law students. The report on Japan highlights how ease of access to electronic resources and legal databases there facilitated the full deployment of remote education in response to the COVID-19 pandemic (pp.190, 200–201). In contrast, the Italian transition to distance learning was impeded by the lack of digital libraries and library services, as well as the fact that databases there were an incomplete replacement of paper libraries (p.329). The social issue of digital inequality is also raised in the report on Cyprus, documenting how impecunious students, who might otherwise have access to such electronic resources and devices through the university libraries, appeared to struggle more in their studies when the instruction was fully remote (p.302). In our view, there is merit in exploring the issue of access to electronic resources in much greater detail given its importance to online legal education.

We unreservedly recommend this book to any academic seeking to shape the future of legal education in their jurisdiction, as well as to those assessing policy options on legal education in the post-pandemic world.

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