



**Resetting the Clock for International Students: A Call for the ABA to Establish Standards for LL.M. Students and for Law Schools to Rethink Their LL.M. Curricula**

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**Introduction**

Created for international lawyers seeking American credentials, LL.M. programs have proliferated, filling a need in an increasingly global market. With few regulatory requirements, and an existing academic infrastructure in place, American law schools have opened their doors to lucrative LL.M. programs.<sup>1</sup>As a result, law schools are eager to welcome international students.

“From the U.S. law school’s perspective, in addition to the obvious commercial advantage, the inclusion of international students signals an internationalization of the school’s educational atmosphere and experience. On the other hand, from the perspective of the incoming students, changes in the world market for legal services have created a new environment in which an international legal education has practical value and demand.”<sup>2</sup>

But there is another reason for the proliferation of these programs.<sup>3</sup> In this age of law school retrenchment, schools are flocking to institute such programs.<sup>4</sup>With few start-up costs, the revenue generated by post-J.D. LL.M.

<sup>1</sup>ABA List of Approved Law Schools, AMERICAN BAR ASSOCIATION,

[https://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools.html](https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html) (last visited July 30, 2018) (As of the date of this article, the American Bar Association has accredited and approved 204 law schools conferring a J.D. degree, three of which are provisionally approved.); Post J.D./Non J.D. Programs by School, AMERICAN BAR ASSOCIATION,

[https://www.americanbar.org/groups/legal\\_education/resources/llm-degrees\\_post\\_j\\_d\\_non\\_j\\_d/programs\\_by\\_school.html](https://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_school.html) (last visited July 30, 2018)(Over 150 law schools presently offer post-J.D. graduate programs.); *see also* Alphabetical Listing of LL.M./Graduate Law Programs, LAW SCHOOL ADMISSIONS COUNCIL, <https://www.lsac.org/llm/choosing-a-law-school/alpha-llm-program-guide> (last visited July 30, 2018)(Ninety law schools offer LL.M. International Law Programs designed exclusively for internationally-trained lawyers.) List of Int’l LL.M. Programs, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/groups/international\\_law/students/llm.html](https://www.americanbar.org/groups/international_law/students/llm.html) (last visited July 30, 2018); This demonstrates a marked increase in LL.M. programs within the past six years. *See* Carole Silver, *States Side Story: Career paths of International LL.M. Students, or I Like to Be in America*, 80 *Fordham L. Rev.* 2383, 2387 n. 10 (2012) (noting that “at least 114 law schools offer LL.M. or similar one-year programs. . .” fifty-five of which offer “U.S. Legal Studies Programs for Foreign Lawyers or International Students.”).

<sup>2</sup>Carole Silver & Swethaa S. Ballakrishnen, *Sticky Floors, Springboards, Stairways & Slow Escalators: Mobility Pathways and Preferences of International Students in U. S. Law Schools*, 3 *UC Irvine J. Inter. Transactional and Comp. L.*, 39, 42-43 (2018).

<sup>3</sup>*Id.* at 42 n. 11. (“By 2016, the number of schools supporting at least one LL.M. program open to foreign law graduates had increased to 154, based on a review of law school websites (records on file with Silver).”).

<sup>4</sup>Carole Silver, *Perspectives on International Students’ Interest in U.S. Legal Education: Shifting Incentives and Influence*, 49 *New Eng. L. Rev.* 463, 465 (2015) [hereinafter *Perspectives*].



programs is significant.<sup>5</sup> As J.D. programs become more expensive and enrollment declines,<sup>6</sup> LL.M. programs are an important additional revenue stream for laws schools seeking to fill the resultant tuition shortfall.<sup>7</sup>

As of the date of this article, the American Bar Association has accredited and approved over 200 law schools conferring a J.D. degree.<sup>8</sup> Over 150 law schools presently offer post-J.D. graduate programs.<sup>9</sup> Of those schools who offer post-J.D. programs, ninety laws schools offer LL.M. International Law Programs.<sup>10</sup> This demonstrates a marked increase in LL.M. programs within the past six years.<sup>11</sup>

Yet there is no guidance from the American Bar Association as to how these programs should be structured.<sup>12</sup> The American Bar Association's standards refer to "degree programs in addition to J.D" but offer little guidance as to how such programs, let alone programs specifically for international lawyers, should be structured. Its oversight is nominal:

*"A law school may not offer a degree program other than its J.D. degree program unless: (a) the law school is fully approved; (b) the Council has granted acquiescence in the program; and (c) the degree program will not interfere with the ability of the law school to operate in compliance with the Standards and to carry out its program of legal education."*<sup>13</sup>

Thus, other than granting "acquiescence," the ABA Council of the Section of Legal Education and Admissions to the Bar (the "Council") takes a hands-off approach to LL.M. programs. And even then, "[a]cquiescence in a post-J.D. program does not constitute ABA approval or endorsement of such a program."<sup>14</sup>

Essentially, law schools are on their own. While law schools offering LL.M. programs for international lawyers typically require a one-year course of study of 22 or more credits,<sup>15</sup> schools are free to determine what these programs should look like and fashion their programs to suit students' and the individual school's needs. States allowing LL.M. degree holders to sit for their bar exam have imposed some requirements which vary from state to state. The result is a hodgepodge of programs targeting international lawyers seeking an American degree.

<sup>5</sup> Carol Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 *Cardozo J. Int'l & Comp. L.* 143, 155 n. 7 (2006)[hereinafter *Internationalizing*].

<sup>6</sup> Silver & Ballakrishnen, *supra* note 3 (noting a decline in enrollment for ABA-approved law schools in all degree programs from 140,000 in the 2013-2014 academic year to below 125,000 by the fall of 2016, "reflecting a decrease in the *Juris Doctor* (J.D.) population. . .").

<sup>7</sup> Perspectives, *supra* note 5 at 465; Copping, *supra* note 1 at 229.

<sup>8</sup> ABA List of Approved Law Schools, AMERICAN BAR ASSOCIATION,

[https://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools.html](https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html) (last visited July 30, 2018).

<sup>9</sup> Post J.D./Non J.D. Programs by School, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/groups/legal\\_education/resources/llm-degrees\\_post\\_j\\_d\\_non\\_j\\_d/programs\\_by\\_school.html](https://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_school.html) (last visited July 30, 2018); *see also* Alphabetical Listing of LL.M./Graduate Law Programs, LAW SCHOOL ADMISSIONS COUNCIL, <https://www.lsac.org/llm/choosing-a-law-school/alpha-llm-program-guide> (last visited July 30, 2018).

<sup>10</sup> List of Int'l LL.M. Programs, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/groups/international\\_law/students/llm.html](https://www.americanbar.org/groups/international_law/students/llm.html) (last visited July 30, 2018).

<sup>11</sup> *See* Carol Silver, *States Side Story: Career Paths of International LL.M. Students, or I Like to Be in America*, 80 *Fordham L. Rev.* 2383, 2387 n. 10 (2012)[hereinafter *States Side Story*](noting that "at least 114 law schools offer LL.M. or similar one-year programs. . ." fifty-five of which offer "U.S. Legal Studies Programs for Foreign Lawyers or International Students." *See also* fn 65, *infra*).

<sup>12</sup> *See* discussion *infra* Section (a)(1); ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 313 (2017-2018), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017\\_2018\\_standards\\_chapter3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> Council to the Section on Legal Education and Admission to the Bar, *Council Statements*, AMERICAN BAR ASSOCIATION (2012-2013), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2012\\_2013\\_council\\_statements.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_council_statements.authcheckdam.pdf)[hereinafter *Council Statements*].

<sup>15</sup> The LL.M. Degree, LAW SCHOOL ADMISSIONS COUNCIL, <https://www.lsac.org/llm/degree/key-facts> (last visited July 30, 2018).



While many international lawyers enrolled in LL.M. programs seek to burnish their own credentials, they do not necessarily intend to sit for a bar exam.<sup>16</sup> Students pursue LL.M. degrees for many reasons.<sup>17</sup> Some see the LL.M. degree as a ticket to greater professional opportunities and career advancement in their home countries. Many seek to pursue an interest in a particular area of law or simply desire to improve their legal English skills.<sup>18</sup>

But for those who do hope to take the bar exam, they are well advised to consider the challenges they face. According to the National Conference of Bar Examiners, only six states<sup>19</sup> presently allow LL.M. degrees from an ABA-approved law school to qualify for their bar exams.<sup>20</sup> Students who do choose to do so are advised by the ABA to consult the individual state requirements.<sup>21</sup>

This raises many questions: Given the proliferation of LL.M. programs for international lawyers who seek to practice law in the United States, should the ABA change course and impose standards and learning outcomes for LL.M. degrees? While Standard 302 of the ABA Program of Legal Education sets out clear requirements for learning outcomes for students enrolled in J.D. programs,<sup>22</sup> no comparable standards are provided for LL.M. programs. What should LL.M. students learn in their short time at an American law school and what learning outcomes should law schools meet to establish a degree of competency? Should those outcomes be more rigorous for students qualifying to sit for a bar exam? And, last, but not least, given the language and cultural barriers many LL.M. students face when they enroll in American law schools, should their course of study be spaced out over two-years, rather than the typical one-year program, to allow more in-depth and methodical instruction?

Law schools have an ethical obligation to provide a quality degree, while recognizing that internationally-trained lawyers enrolled in American law schools must work twice as hard in far less time to master the material. LL.M. students are faced with a myriad of challenges. They must quickly acclimate to a system of legal education markedly different than their own. An extremely diverse group of students, they must learn the ins and outs of American law schools<sup>23</sup> and master legal doctrine steeped in the common law, a sharp departure from systems of law based on civil codes. They must learn a new system of legal research highly dependent on the notion of *stare decisis* and precedent and become conversant in a legal vernacular which for students trained in formalistic legal language is

<sup>16</sup> State Side Story, *supra* note 12 at 2429.

<sup>17</sup> Perspectives, *supra* note 5 at 474.

<sup>18</sup> *Id.*

<sup>19</sup> National Council of Bar Examiners, *Comprehensive Guide to Bar Admissions Requirements*, 24 (2018), <http://www.ncbex.org/pubs/bar-admissions-guide/2018/mobile/index.html#p=24> (last visited July 31, 2018)(Those states are California, Georgia, New York, Vermont, Washington, and Wisconsin.).

<sup>20</sup> This article only addresses the LL.M. degree as a pathway to the bar exam. Many states recognize other ways of qualifying for the bar beyond the LL.M. degree. CITE. For example, .....[include references here]

<sup>21</sup> Law School Admission Council, *Thinking About Law School: Bar Admission for Internationally Educated Lawyers*, <https://www.lsac.org/J.D./thinking-about-law-school/admission-to-bar/international-bar-admission> (last visited July 31, 2018)(“As a result of the variance in state bar admission rules, the ABA strongly encourages individuals to contact the state board of bar examiners in the state(s) in which they are interested in being admitted to ascertain its requirements to sit for the bar examination.”).

<sup>22</sup> ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 302 (2017-2018), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017\\_2018\\_standards\\_chapter3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf). Standard 302 sets out the “Learning Outcomes” law schools are required to meet.

“A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.”

<sup>23</sup> Teresa Kissane Brostorr, *Using Culture in the Classroom: Enhancing Learning for International Law Students*, 15 Mich. St. J. Int’l L. 557, 568 (2007) (For many international students, this is their first experience with written exams.).



surprisingly simple, direct, and clear. LL.M. students are further burdened by language and a host of cultural challenges<sup>24</sup> leading to unexpected landmines along the way. This is particularly acute in the classroom where “[c]lassroom talk is deeply embedded in culture.”<sup>25</sup>

It is patently difficult for law schools to address these needs across the LL.M. curriculum and do so within a decidedly short period of time. The unique challenges these students face require a methodical approach allowing student’s time to internalize and hone what they learn. Yet, as they presently exist, typical LL.M. programs lasts a year (or two, if the program is part-time). The need to teach the material “early and rapidly”<sup>26</sup> necessarily thrusts LL.M. students into a whirlwind of new language norms and legal research paradigms, all while trying to adjust to an American legal education rooted in a common-law system.<sup>27</sup>

In short, while time is of the essence, LL.M. students simply need more time to adapt. American law schools need to recognize this inherent tension within their programs so that LL.M. students achieve the necessary level of competency an American law degree presumably guarantees. It is time for the ABA to take the lead and establish minimum guidelines for such programs, at least for those which qualify international lawyers to sit for the bar exam.

This article addresses the questions posed and notes the inherent difficulty in providing adequate instruction in American law schools offering LL.M. degrees to international students. Section I sets out the requirements for J.D. and LL.M. degrees as required by the ABA. Section II discusses the requirements of individual states allowing LL.M. students to sit for their bar exams.<sup>28</sup> Section III identifies the challenges for international LL.M. students and the problems that stem from trying to teach too much, too quickly, and too superficially within the context of a one-year LL.M. program. Section III proposes: 1) that the ABA provide learning outcomes and standards for LL.M. students seeking to take a bar exam, and proposes 2) a required two-year curriculum for LL.M. programs for international lawyer who want to take the bar exam, and a one-year curriculum for students who wish to return to their home jurisdictions.

## I. Is Time Standing Still? The ABA and the LL.M. Degree

With the increased globalization of legal services and interest by international lawyers in an American law degree, comes an increased need for a set of standards to ensure that such degrees represent what they purport to represent: a minimum level of competence in the study of the American legal system. What does such competence represent? Is it enough that students gain a simple understanding of the American legal system or should they achieve a degree of competence to sit for the bar exam? While the ABA sets clear objectives and outcomes for J.D. degrees, its approach to the LL.M. degree is decidedly hands-off. This section examines the ABA’s role vis-a-vis both degrees.

<sup>24</sup> See *infra* Part II.

<sup>25</sup> Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 Int’l J. Legal Info. 396,421 (2002) (citations omitted).

<sup>26</sup> Julia E. Hanigsberg, *Swimming Lessons: An Orientation Course for Foreign Graduate Students*, 44 J. Legal Educ. 588, 596 (1994)

<sup>27</sup> Nowhere is this tension more manifest than in the legal research and writing course for LL.M. students. In a typical J.D. first year legal writing course, students learn the fundamentals of objective legal analysis, case synthesis, legal reasoning, and legal research within the context of various writing assignments, each building in complexity. Such a course is essential to law students’ success and development as lawyers. LL.M. students, with little writing experience or understanding of the American legal system, must somehow make sense of this all while grappling with language and cultural issues. Students struggle to keep up and master the material. To be successful, “[t]hese students need intensive support for their studies, and teachers of legal research and writing must adjust their teaching to serve these needs.” Mark E. Wojcik and Diane Penneys Edelman, *Overcoming Challenges in the Global Classroom: Teaching Legal Research and Writing to International Law Students and Law Graduates*, 3 J. Legal Writing Inst. 127, 128-29 (1997).

<sup>28</sup> This article only examines states that allow foreign law graduates who obtain an LL.M. degree from an ABA-approved law school “to take the bar exam on this basis alone.” *Supra* note 20.



A. **J.D. Programs:** The American Bar Association Standards<sup>29</sup> setting forth its program of legal education mandates that law schools “shall maintain a rigorous program of legal education.”<sup>30</sup> At a minimum, they are required to offer “a course of study of not fewer than 83 credit hours . . .”<sup>31</sup> In addition, J.D. programs “shall” require that students complete:

- 1) one two-credit course in professional responsibility,
- 2) one first-year and upper-level writing experience “both of which are Faculty supervised,” and
- 3) “One or more experiential course(s) totaling at least six credits<sup>32</sup> hours.”

Guidelines for simulation courses and clinics,<sup>33</sup> other courses of academic study,<sup>34</sup> distance learning,<sup>35</sup> study abroad,<sup>36</sup> academic standards,<sup>37</sup> academic advising,<sup>38</sup> and other matters relating to the administration of a law school,<sup>39</sup> are set forth. While leaving significant room for individual law school’s interpretation, these guidelines are at the core of an accredited law school’s program.

Significantly, the ABA Standards require “sufficient” bar passage.<sup>40</sup> Schools must show that 75% of students who sat for the bar exam within a five-year period, or 75% of students who sat for a bar exam in at least three of those five years, have passed the bar exam. Schools out of compliance must be in compliance within two years or demonstrate “good cause<sup>41</sup> for extending the period the law school has to demonstrate compliance.”<sup>42</sup>

<sup>29</sup>ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, CHAPTER 3 (2017-2018),

[https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017\\_2018\\_standards\\_chapter3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf).

<sup>30</sup>*Id.* at Standard 301(a).

<sup>31</sup>*Id.* at Standard 311.

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<sup>33</sup>*Id.* at Standard 304.

<sup>34</sup>*Id.* at Standard 305.

<sup>35</sup>*Id.* at Standard 306.

<sup>36</sup>*Id.* at Standard 307.

<sup>37</sup>*Id.* at Standard 308.

<sup>38</sup>*Id.* at Standard 309.

<sup>39</sup> See generally, Chapter 3, *supra* note 30.

<sup>40</sup>*Id.* at Standard 316.

<sup>41</sup>*Id.* A school can demonstrate good cause

“by submitting evidence of:

(1) The law school’s trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school’s favor, a declining or flat trend against it.

(2) The length of time the law school’s bar passage rates have been below the first-time and ultimate rates established in paragraph A: a shorter time period will be considered in the school’s favor, a longer period against it.

(3) Actions by the law school to address bar passage, particularly the law school’s academic rigor and the demonstrated value and effectiveness of its academic support and bar preparation programs: value-added, effective, sustained and pervasive actions to address bar passage problems will be considered in the law school’s favor; ineffective or only marginally effective programs or limited action by the law school against it.

(4) Efforts by the law school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the law school will be considered in the school’s favor; ineffective or limited efforts by the law school against it.

(5) Efforts by the law school to provide broader access to legal education while maintaining academic rigor: sustained meaningful efforts will be viewed in the law school’s favor; intermittent or limited efforts by the law school against it.

(6) The demonstrated likelihood that the law school’s students who transfer to other ABA approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school’s favor, providing the law school has undertaken counseling and other appropriate efforts to retain its well performing students.

(7) Temporary circumstances beyond the control of the law school, but which the law school is addressing: for example, a natural disaster that disrupts operations or a significant increase in the standard for passing the relevant bar examination(s).



J.D. programs are subject to rigorous oversight from the nascent process of obtaining provisional approval through the seven-year cycle of site evaluations and self-study.<sup>43</sup> Schools must abide by a protracted accreditation and approval process.<sup>44</sup> At the outset, when seeking approval for its programs, law schools must present “a reliable plan for bringing the school into full compliance with the Standards within three years<sup>45</sup> after receiving provisional approval.” If satisfied that “a school is in substantial compliance and it has a reliable plan for coming into full compliance,” the Council and the Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar will grant provisional approval.<sup>46</sup> To obtain full approval, a school must demonstrate that it is in full compliance with the Standards within five years of obtaining provisional approval.<sup>47</sup>

Once granted full approval, law schools are monitored with annual questionnaires relating to, inter alia, bar passage, curriculum, student retention, student placement, facilities, and faculty.<sup>48</sup> These schools then undergo full site evaluations every seven years during which they must complete a “Self-Study which elicits information about compliance with each Standard. . .”<sup>49</sup>

In sum, as one might expect, ABA oversight of J.D. programs is rigorous and on-going, No less than the effectiveness and integrity of the American bar is at stake.

*“A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”<sup>50</sup>*

**B. LL.M. Programs:** Surely one might expect the ABA to take a similar position when it comes to ensuring the integrity of LL.M. degrees, at least when it comes to qualifying students to sit for a bar exam. After all, “effective, ethical, and responsible participation as members of the legal profession” is a value that transcends how one qualifies to sit for the bar exam. If one is to practice law in the United States, and the ABA is the arbiter of qualifying standards for J.D. degrees, why would it not provide similar guidelines to ensure uniformity of standards? Unfortunately, that is not the case and the position of the ABA is clear:

*The American Bar Association’s approval of a law school extends only to the first professional degree in law (J.D.) offered by a law school. ABA approval of a school’s J.D. program provides bar admission authorities, students and the public assurance that the law school’s J.D. program meets the Standards established by the ABA and that graduates of the school have completed an educational program that prepares them for admission to the bar and to participate effectively and responsibly in the legal profession.*

ABA approval does not extend to any program supporting any other degree granted by the law school. Rather the content and requirements of those degrees, such as an LL.M., are created by the law school itself and do not reflect any judgment by the ABA regarding the quality of the program . . . *The ABA Accreditation process does not*

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(8) Other factors, consistent with a law school’s demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school’s efforts to improve them.”

<sup>42</sup>*Id.*

<sup>43</sup> ABA Section of Legal Education and Admission to the Bar, *The Law School Accreditation Process*, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2016\\_accreditation\\_brochure\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2016_accreditation_brochure_final.authcheckdam.pdf).

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup> *Id.*

<sup>47</sup>*Id.*

<sup>48</sup>*Id.*

<sup>49</sup>*Id.*

<sup>50</sup> ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 301(a) (2017-2018), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017\\_2018\\_standards\\_chapter3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf).



*evaluate in any way whether a school's post-J.D. degree program ensures that students in the program gain the basic knowledge and skills necessary to prepare the student adequately for the practice of law.*"<sup>51</sup>

The Council's position is clear: it steers clear of LL.M. programs designed for international lawyers. In sharp contrast to standards for J.D. degrees, there are virtually no standards when it comes to LL.M. programs. At best, an oblique reference to such programs is made in Standard 313 ("Degree Programs in Addition to J.D."),<sup>52</sup> requiring little more than that the law school be fully approved, that the program "not interfere with the ability of the law school to operate in compliance with the Standards and to carry out its program of legal education," and that the "Council has granted acquiescence in the program."<sup>53</sup> Students interested in pursuing an LL.M. degree are advised to consult the individual schools for their requirements.<sup>54</sup>

So, while the ABA assures the public that J.D. degree holders are competent and prepared "to participate effectively and responsibly in the legal profession," no similar assurances are given regarding LL.M. degree holders. To the extent that the public is assured a certain level of professional competence through ABA oversight, no such guarantees are provided if one's attorney happens to be one who holds an LL.M. degree.

In contrast, the American Medical Association strictly controls the qualifications and licensing of internationally-trained doctors seeking to practice medicine in the United States.<sup>55</sup> While licensing requirements may vary from state to state, those requirements "are designed to provide that graduates of foreign medical schools meet the same requirements to obtain a medical license as graduates of accredited United States and Canadian medical schools."<sup>56</sup> From the public's perspective, the standards ensure a certain level of competence. Indeed, through a rigorous certification process, the Educational Commission for Foreign Medical Graduates "assesses whether physicians graduating from these schools are ready to enter programs of graduate medical education in the United States."<sup>57</sup>

Simply put, the ABA takes a "caveat emptor" approach.<sup>58</sup> It cautions students that individual LL.M. programs "do not reflect the judgment by the ABA accrediting bodies regarding the quality of the program."<sup>59</sup> Its only involvement is in its "acquiescence" in the law school's decision to offer such a program. And even then, "[a]cquiescence . . . does not constitute ABA approval or endorsement of such a program."<sup>60</sup> There is no level of assurance afforded the public that attorneys trained overseas who have obtained an LL.M. degree at an American law school have the "the basic knowledge and skills necessary to prepare the student adequately for the practice of law."<sup>61</sup>

<sup>51</sup> Council Statements, *supra* note 15 at (1)(emphasis added).

<sup>52</sup> *Supra* note 30 at Standard 313.

<sup>53</sup> ABA Section of Legal Education & Admission to the Bar, *Post J.D. & Non J.D. Programs*, [https://www.americanbar.org/groups/legal\\_education/resources/llm-degrees\\_post\\_j\\_d\\_non\\_j\\_d.html](https://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d.html) (last visited July 31, 2018).

<sup>54</sup> *Id.*

<sup>55</sup> AMA, *International Medical Graduates*, <https://www.ama-assn.org/life-career/international-medical-graduates> (last visited July 31, 2018).

<sup>56</sup> *Id.*

<sup>57</sup> Educational Commission for Foreign Medical Graduates, *ECFMG Certification Fact Sheet*, <https://www.ecfmg.org/forms/certfact.pdf>; At the entry level, applicants seeking to apply to an American medical school, are guided through the process by the AMA. American Medical Association, *State Licensure Board Requirements for International Medical Graduates*, <https://www.ama-assn.org/life-career/state-licensure-board-requirements-international-medical-graduates> (last visited July 31, 2018).

<sup>58</sup> State Side Story, *supra* note 12 at 2389 ("The American Bar Association Section of Legal Education and Admissions to the Bar which probably gathers more information on law students and other aspects of legal education than any other organization, has not focused its data-gathering efforts on LL.M. students, likely because the LL.M. degree is not accredited by the Section.")

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Council Statements, *supra* note 15. The ABA's lack of interest in LL.M. degrees is, to say the least, troubling. Recently, the ABA has come under increasing criticism for being "out of touch with the profession." Mark A. Cohen, *Is the American Bar Association Passe?* Forbes, August 1, 2018. Similarly, its reluctance to weigh in on LL.M. degrees is out of step with the demands of the global legal marketplace and needs of international lawyers seeking an LL.M. degree. If the ABA is going to "acquiesce" in the proliferation of such programs, it has an obligation to ensure their value.



Such a passive stance regarding academic standards is troubling, particularly given the proliferation of LL.M. degrees programs for international students in the past decade.<sup>62</sup> Unlike J.D. programs which are subject to periodic accreditation reviews, the ABA does not require LL.M. programs to meet any objective standards. Subject only to the whims of the marketplace and word-of-mouth network, American law schools are free to set their own standards, so long as their LL.M. programs do “not interfere with the ability of the law school to operate in compliance with the [ABA] Standards. . .”<sup>63</sup>

In opening their doors to international students, law schools are not tethered to any standards or oversight. Indeed, some schools are painfully transparent in managing students’ expectations. “The policy of ambivalence is captured by law schools’ messages relating to career goals of aspiring international LL.M. students.”<sup>64</sup> Consistent with the Council’s statement that it does not ensure that students in LL.M. programs “gain the basic knowledge and skills necessary to prepare the student adequately for the practice of law,” some law schools have told their students not to expect jobs in the United States.<sup>65</sup>

“The market for foreign-trained attorneys in the United States is very limited, and only a very small percentage of LL.M. . . . graduates from all United States law schools finds work here.”<sup>66</sup>

“The LL.M. program does not prepare students for permanent employment in the United States, . . .”<sup>67</sup>

“When it comes to seeking long term employment in the U.S. it is important to keep in mind that an LL.M. degree is not a substitute for the three-year J.D. degree.”<sup>68</sup>

“Unfortunately, it is very difficult for LLM graduates to find law-related jobs in the United States today. Experience has shown that only a very, very small percentage of LLM graduates from all United States law schools find work here.”<sup>69</sup>

This is not surprising. “The weight of the U.S. News rankings looms large in informing this attitude of ambivalence, because the LL.M. degree is not included in the formulation of ranking considerations.”<sup>70</sup> It is understandable, then, why career services resources are directed at J.D. students. Moreover, “[s]chools may fear that an endorsement of foreign graduate students would impinge on the market for J.D. graduates.”<sup>71</sup> Thus, law schools downplay students’ expectations and put minimal resources into their LL.M. programs.<sup>72</sup>

But international students who hope to take the bar exam in one of the six states allowing them to do so,<sup>73</sup> reasonably expect that their costly<sup>74</sup> LL.M. degrees have value.<sup>75</sup> If the ABA does not assure LL.M. students a level of competence in the practice of law, and law schools do not assure them that the American legal market is open to them

<sup>62</sup> Silver &Ballakrishnen, *supra* note 3 at 49, n.2 (noting that such programs have “approximately doubled over the last ten years.” (footnote omitted).

<sup>63</sup> *Supra* note 30 at Standard 313.

<sup>64</sup> State Side Story, *supra* note 12 at 2415.

<sup>65</sup> *Id.* at 2417, n. 102 (Other law schools are more upbeat about employment prospects and emphasize employment opportunities in the students’ countries of origin.)

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 2417.

<sup>68</sup> *Id.* at 2416, n.100.

<sup>69</sup> *Id.* at 2415-16.

<sup>70</sup> *Id.* at 2415.

<sup>71</sup> Internationalizing, *supra* note 6 at 173.

<sup>72</sup> See State Side story, *supra* note 12 at 2415.

<sup>73</sup> *Supra* note 20.

<sup>74</sup> Tuition for LL.M. programs range from a low of approximately \$28,000 to a high of approximately \$61,000. <https://llm-guide.com/schools/usa>.

<sup>75</sup> Silver &Ballakrishene, *supra* note 3 at 56 (LL.M. graduates who return to their home countries benefit from “halo advantages, which come from being associated with an international law school from a high status country.”); State Side Story, *supra* note 12 at 2423-29 (but graduates who stay in the United States are less successful in securing legal work consistent with their expectations.).





upon graduation, then wherein lies that value?<sup>76</sup>The LL.M. degree should offer more than a “fulfilling educational experience . . . within the available time-frame . . . to prepare them for the next step in their careers.”<sup>77</sup>

When LL.M. students matriculate they have clear goals in mind. According to a 2003 survey of international LL.M. students, the majority enroll to build and strengthen relationships with U.S. based clients.<sup>78</sup> They hope to do this by improving their legal English and understanding of U.S. law.<sup>79</sup> They intend to bring this knowledge back with them to their home jurisdictions.<sup>80</sup> Through the process of earning an LL.M. degree, these students seek to obtain a level of competence in United States law and legal English. Others enroll in a LL.M. program to qualify to sit for a bar exam in the United States or to gain practical experience in a U.S. law office.<sup>81</sup> These students view the bar license or the practical experience in a U.S. law office as the primary value of an LL.M. degree.<sup>82</sup> A statistic worth noting, when evaluating the currency of an LL.M. degree for international students, is that an increasing number of them are enrolling in J.D. programs.<sup>83</sup> This statistic raises some questions. Is the LL.M. degree losing its value? Are international students enrolling in J.D. programs to gain more practical experience than an LL.M. program allows? Or are they enrolling to have a better chance at passing the bar? The ABA, which accredits U.S. law schools and the U.S. law schools, who offer LL.M. degrees, have a duty to meet the students’ expectations and provide them with a valuable program that allows them to gain the level of competence they seek.

With the burgeoning growth of such programs, the ABA should rethink its position and establish standards and expected learning outcomes for international students enrolled in LL.M. programs, at least for those LL.M. students intending to sit for a bar exam who hope to bootstrap themselves into the practice of law in the United States.<sup>84</sup> Otherwise, these post-J.D. degrees will lose their luster as more international students abandon these programs and pursue a traditional J.D. track to the practice of law.<sup>85</sup>

## II. State Bar Requirements

Unlike the ABA, several states have stepped in and established requirements for LL.M. degree holders to sit for their bar exams on the basis of having acquired an LL.M. degree from an ABA-approved law school.<sup>86</sup> While graduates of foreign law schools are presently eligible for admission in 34 states,<sup>87</sup> only six states<sup>88</sup> allow foreign-trained lawyers who obtain LL.M. degrees to sit for their bar exams “on this basis alone.”<sup>89</sup> While a typical LL.M.

<sup>76</sup>*Id.* at 43 (It is not surprising, then, that there is an increased interest in J.D. degrees among international lawyers seeking an American credential.).

<sup>77</sup>Spanbauer, *supra* note 26 at 425.

<sup>78</sup>Internationalizing, *supra* note 6 at 156-57 (quoting a graduate “an LL.M. guarantees that you know how to speak English, that you’ve been exposed to American culture, legal culture. This makes (the clients) feel more comfortable”).

<sup>79</sup>*Id.*

<sup>80</sup>*Id.*

<sup>81</sup>Silver &Ballarkrishene, *supra* note 3 at 49.

<sup>82</sup>*Id.*

<sup>83</sup>*Id.* at 43-44.

<sup>84</sup>This article does not address the many difficulties international students face in the U.S. legal job market beyond their ability to qualify for and take a bar exam. For a more in-depth analysis of the legal job market and the roadblocks international students face, see State Side Story, *supra* note 12 at 2419-29.

<sup>85</sup>Silver and Ballarkrishnen, *supra* note 5 at 50 (“There has been a growth over the last five years or so in the proportion of international students enrolling in U.S. J.D. programs, . . .”). See also *id.* at 52, n. 61 (noting one student’s dismay that LL.M. students cannot practice law and that “the J.D. program sounds more interesting to me than the LLM program.”). Indeed, it has been suggested that the ABA would go in the opposite direction and limit the ability to practice by foreign lawyers and law graduates. Internationalizing, *supra* note 6 at 173.

<sup>86</sup>For purposes of this article, the authors are only examining the standards from states in which LL.M. degree holders may qualify to sit for the state bar exam.

<sup>87</sup>See National Conference of Bar Examiners & ABA Section of Legal Education & Admission to the Bar, Comprehensive Guide to Bar Admission Requirements 2018, Chart 4 & Supplemental Remarks 12-17, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/2018\\_ncbe\\_comp\\_guide.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2018_ncbe_comp_guide.authcheckdam.pdf).

<sup>88</sup>*Supra* note 22.

<sup>89</sup>*Id.*



degree can be completed in a one-year program,<sup>90</sup> international students may take longer to do so. Each state sets its own requirements for holders of LL.M. degrees to qualify for their bar exam. A brief description of those state requirements for LL.M. degrees follows.<sup>91</sup>

### A. California

The State Bar of California Bar establishes the requirements for admission.<sup>92</sup> The requirements for LL.M. programs in California are relatively sparse. First, applicants must certify that they are eligible to take the California bar examination. International students holding a foreign law degree but who are not yet admitted to the practice of law in their home countries must certify that their “first degree in law is substantially equivalent to a Juris Doctor degree awarded by schools approved by the American Bar Association<sup>93</sup> and that their first degree in law “meets the educational requirements for admission to practice law” in their home countries.<sup>94</sup> In addition, such students must complete one year of legal study in the United States.<sup>95</sup> Such a course of study must include a minimum of “20 units of specific legal education.”

All courses completed in furtherance of an LL.M. degree “must be graded using the same standards the law school uses in grading” J.D. students. Applicants must pass all courses. In addition, all course work must be completed with three years of when the applicant began the LL.M. program.<sup>96</sup>

Students must complete a minimum of 20 credits, 12 of which are in “one course in four separate subjects tested on the California Bar Examination.”<sup>97</sup> One of those four courses must be Professional Responsibility.<sup>98</sup> The State Bar of California does not require that applicants complete a legal writing or research course.<sup>99</sup>

### B. Georgia

Georgia’s State Bar requirements for admission to the bar for students holding an LL.M. degree are set forth by the Supreme Court of Georgia in its Rules Governing Admission to the Practice of Law.<sup>100</sup> Typical of jurisdictions

<sup>90</sup>See *supra* note 18; see also Emily Cataneo, *Two Year J.D. Programs for Foreign Lawyers*, LLM Guide (Jan. 11, 2016), <https://llm-guide.com/articles/two-year-j.d.-programs-for-foreign-lawyers> (Some schools have started to offer a two-year LL.M. degree to allow more time (but not requiring more credits) to acclimate to Legal English and the American legal system); see, e.g., University at Southern California, Gould School of Law, *Two Year Extended Masters of Law (LL.M.) Degree*, <https://gould.usc.edu/academics/degrees/two-year-llm/> (last visited Aug. 1, 2018); Georgetown University Law Center, *Two Year LL.M. with Certificate in Legal English for Foreign Trained Lawyers*, <https://curriculum.law.georgetown.edu/llm/llm-llm-programs/llm-two-year-extended-certificate-legal-english-foreign-law-graduates/> (last visited Aug. 1, 2018); Penn State Law, *Pre-LL.M. One-Year Certificate Program* <https://pennstatelaw.psu.edu/academics/two-year-llm-program/certificate> (last visited Aug. 1, 2018) (offering a Legal English certificate prior to attending an LL.M. program); Washington University Law, *Two-Year Master of Laws (LL.M.) for Foreign Lawyers*, <http://law.wustl.edu/llm2year/> (last visited Aug. 1, 2018); Boston University School of Law, *Two-Year LL.M. Program*, <http://www.bu.edu/law/academics/llm-degrees/two-year-llm-program> (last visited Aug. 1, 2018).

<sup>91</sup>State Side Story, *supra* note 12 at 2433 (it is no surprise that LL.M. students from English speaking common law (“ECSL”) countries are typically more successful in passing the bar and securing legal employment in the United States.).

<sup>92</sup> The State Bar of California, *Admissions: Foreign Education*, <http://www.calbar.ca.gov/Admissions/Requirements/Education/Legal-Education/Foreign-Education> (last visited Aug. 1, 2018) (Attorneys “already admitted to the active practice of law in a foreign country or in another U.S. jurisdiction and are in good standing. . . are qualified to take the California Bar Examination without having to complete any additional legal education.” These applicants must submit proof of admission to the bar in a foreign jurisdiction and register with the California State Bar.).

<sup>93</sup> The State Bar of California, *Guidelines for Applicants with a Foreign Law Degree*, <http://www.calbar.ca.gov/Admissions/Requirements/Education/Legal-Education/Foreign-Education/Foreign-Law-Degree> (last visited Aug. 1, 2018).

<sup>94</sup>*Id.*

<sup>95</sup>*Id.*

<sup>96</sup>*Id.*

<sup>97</sup>*Id.*

<sup>98</sup>*Id.*

<sup>99</sup>*Id.*

<sup>100</sup>Ga. R. Gov’g. Admis. Prac. Law B § 4 (2018).



allowing LL.M. graduates to sit for the bar exam, applicants must submit a “Petition for Eligibility Determination for Foreign Educated Applicants” as well as an “Application for Certification of Fitness to Practice Law.”<sup>101</sup> The Supreme Court of Georgia has also established clear degree<sup>102</sup> and curricular requirements.<sup>103</sup>

Students must receive their legal education “from a foreign law school that is government sanctioned, chartered, or recognized . . . by the appropriate authority within the country.”<sup>104</sup> In addition, the applicant must be “authorized to practice law in a foreign jurisdiction,<sup>105</sup> and receive an LL.M. degree “fully approved by the American Bar Association. . .” Such a “program should prepare students for admission to the bar<sup>106</sup> and for effective and responsible participation in the U.S. legal profession.”<sup>107</sup>

Students may attend a full-time or part-time program (the latter of which must be completed within 36 months).<sup>108</sup> All courses must be taught in English and in the United States or its territories and must be attended on site at an ABA-approved law school.<sup>109</sup>

In Georgia, to qualify “for the practice of law in the United States,”<sup>110</sup> students must complete 26 credit hours of instruction, 18 hours of which must be taught by full-time or emeritus faculty.<sup>111</sup> Of those courses, 13 credits must include the following:

- a. Introduction to United States Law (2 credits);<sup>112</sup>
- b. Legal Research and Writing (3 credits);
- c. United States Constitutional Law (3 credits);
- d. Civil Procedure or Georgia Practice and Procedure (3 credits);
- e. Professional Responsibility (2 credits).<sup>113</sup>

For the remaining 13 credits, students must select one course each from a menu of choices in two categories.<sup>114</sup>

## **B. New York**

The New York Court of Appeals establishes the requirements for admission of attorneys seeking to be admitted to the New York bar.<sup>115</sup> In addition, lawyers who have studied law in a foreign country who wish to be

<sup>101</sup> Supreme Court of Georgia, Office of Bar Admissions, *Instructions for Foreign Educated Applicants*, <https://www.gabaradmissions.org/instructions-for-foreign-educated-applicants> (last visited Aug. 1, 2018).

<sup>102</sup> *Supra* note 101 at § 4(c)(3).

<sup>103</sup> Supreme Court of Georgia, Office of Bar Admissions, *Curricula Criteria for LL.M. Program for the Practice of Law in the United States*, <https://www.gabaradmissions.org/criteriallm>.

<sup>104</sup> *Supra* note 101 at § 4(c)(1).

<sup>105</sup> *Id.* at § 4(c)(2).

<sup>106</sup> *Id.* at § 7. (The rules governing admission to the practice of law require Georgia law schools to “publicly disclose on its website the first-time bar passage rates by state of its most recent class of graduates of an LL.M. programs specially designed to comply with these Curricular Criteria and to prepare students for the practice of law in the United States.”).

<sup>107</sup> *Id.* at § 4 (c)(3)(b).

<sup>108</sup> *Supra* note 101.

<sup>109</sup> *Id.* at § 6.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at § 2.

<sup>112</sup> *Id.* (Schools are free to offer a waiver for this course for appropriate candidates from common law countries.)

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* Of the remaining 13 credit hours:

(a) At least one course must be selected from Contracts, Torts, Property, Corporations, Administrative Law, Evidence, and Commercial Law (Uniform Commercial Code); and (b) At least one course or equivalent must be selected from Trial Advocacy, Appellate Advocacy, Negotiation, Mediation, Transactional Practice, Alternative Dispute Resolution, Fundamentals of Law Practice, Externship Placement, and Legal Clinic.”

<sup>115</sup> N.Y. COMP. CODES R. & REGS. tit. 22 § 520.6 (d) (2018) (These provisions became effective during the 2012-2013 academic year and were implemented for applicants seeking to take the July 2013 New York State bar exam.).



admitted to the New York bar, may qualify under certain circumstances.<sup>116</sup> At the outset, applicants who have “studied in a foreign country may qualify to take the New York State bar examination by submitting to the New York State Board of Law Examiners satisfactory proof of the legal education required by this section.”<sup>117</sup> To that end, § 520.6 (b)(3) sets forth the requirements for qualifying LL.M. degrees.<sup>118</sup>

In addition to requiring students to certify fulfillment of “the educational requirements for admission to the practice of law in a country other than the United States,”<sup>119</sup> § 520.6 provides that an LL.M. degree can qualify a foreign-trained lawyer to sit for the New York State bar examination so long as the certain degree and course requirements are met:

22 NYCRR 520.6 (3) provides that the following LL.M. degree requirements must be satisfied for the degree to qualify for the New York State bar examination:

“(i) the program shall consist of a minimum of 24 credit hours (or the equivalent thereof, if the law school is on an academic schedule other than a conventional semester system) which, except as otherwise permitted herein, shall be in classroom courses at the law school in substantive and procedural law and professional skills;

(ii) a minimum of 700 minutes of instruction time, exclusive of examination time, must be required for the granting of one credit hour;

(iii) the program shall include a period of instruction consisting of no fewer than two semesters of at least 13 calendar weeks each, or the equivalent thereof, exclusive of reading periods, examinations and breaks, and shall not be completed exclusively during summer semesters, but a maximum of four credit hours may be earned in courses completed during summer semesters;

(iv) the program shall be completed within 24 months of matriculation;

(v) all coursework for the program shall be completed at the campus of an American Bar Association approved law school in the United States, except as otherwise expressly permitted by subdivision (b)(3)(vii).<sup>120</sup>

22 NYCRR 520.6 (3)(vi) further provides that an LL.M. degree completed by the applicant shall include the following courses:

“(a) a minimum of two credit hours in a course or courses in professional responsibility;

(b) a minimum of two credit hours in legal research, writing and analysis, which may not be satisfied by a research and writing requirement in a substantive law course;

(c) a minimum of two credit hours in American legal studies, the American legal system or a similar course designed to introduce students to distinctive aspects and/or fundamental principles of United States law, which may be satisfied by a course in United States constitutional law or United States or state civil procedure; credit earned in

<sup>116</sup>N.Y. COMP. CODES R. & REGS. tit. 22 § 520.6 (2018). The authors focus here on degree and course requirements for LL.M. degrees only. Other requirements such as completion of law degrees in a foreign country or that LL.M. students seeking to sit for the New York bar examination complete a “Foreign Evaluation” and other documentation to the Board of Law Examiners, are not discussed here.

<sup>117</sup>*Id.*

<sup>118</sup>N.Y. COMP. CODES R. & REGS. tit. 22 § 520.6 (b)(3) (2018).

<sup>119</sup>*Id.*

<sup>120</sup>N.Y. COMP. CODES R. & REGS. tit. 22 § 520.6 (b)(3)(vi-vii) (2018) (Notably, on-line “or other distance learning courses” are not sanctioned by the New York Court of Appeals for LL.M. degrees qualifying for the New York bar examination.); *but see* N.Y. COMP. CODES R. & REGS. tit. 22 § 520.3(c)(6) (2018) (In contrast, distance learning for J.D. degrees is allowed so long as, among other restrictions, students take no more than a total of 15 credit hours for such courses.); *see alsosupra* note 30 at Standard 306. Indeed, the opportunities for distance learning in LL.M. programs offer another way into the lucrative LL.M. market. As recently as April 2018, George Mason University, Antonin Scalia Law School started an online LL.M. program in U.S. law for international lawyers to commence in the fall of 2018. George Mason University, Antonin Scalia Law School, *LL.M. in U.S. Law Online*, [https://www.law.gmu.edu/news/2018/us\\_law\\_online](https://www.law.gmu.edu/news/2018/us_law_online) (last visited Aug. 1, 2018).



such course in excess of the required two credit hours may be applied in satisfaction of the requirement of subdivision (b)(3)(vi)(d); and

(d) a minimum of six credit hours in other courses that principally focus on subject matter tested on the New York State bar examination or the New York Law Examination prescribed in section 520.9(a)(3) of this Part.”<sup>121</sup>

### C. Vermont

The Vermont Judiciary establishes the rules for admission to the Vermont Bar,<sup>122</sup> and offers two paths for foreign-trained graduates. First, students with law degrees from schools outside the United States who can show that their law school education was based on English common law and their education is otherwise equivalent to American, ABA-approved law schools<sup>123</sup> can qualify to take the Vermont bar exam.<sup>124</sup> In addition, students must show that they are “admitted to the bar of a court of general jurisdiction in the country in which the Applicant attended the Foreign Law School and has maintained good standing in that bar or resigned from that bar while still in good standing.”<sup>125</sup>

Second, if the students’ education was not based on English common law, students seeking to sit for the Vermont bar exam may “cure” this deficiency by obtaining an LL.M. degree from an ABA-approved law school in the United States.<sup>126</sup> To that end, applicants to the bar seeking to qualify by completing an LL.M. degree must show that 1) the applicant successfully complete a course of study within 24 months of matriculation;<sup>127</sup> 2) the LL.M. program consists of a minimum of 24 credits<sup>128</sup>; and that 3) the LL.M. degree requires courses in professional responsibility, legal writing, American legal studies, and at least six credits in courses covered by the Uniform Bar Exam.<sup>129</sup>

### D. Washington

International lawyers have two paths to qualifying for the State of Washington’s bar exam. Applicants must show that they:

<sup>121</sup>*Id.*

<sup>122</sup> Vermont Judiciary, *Admission to the Vermont Bar*, <https://www.vermontjudiciary.org/attorneys/admission-vermont-bar> (last visited Aug. 1, 2018).

<sup>123</sup>VT. BAR ADM. R. 8(c)(1) (2017)(Whether a foreign legal education satisfies this standard is determined by an “equivalency determination process.”).

<sup>124</sup>*Id.* at 8(b). (The rule states: “**Outside of the United States.** An Applicant who has graduated from a foreign, non- Approved Law School (“Foreign Law School”) must establish he or she has: (1) completed a legal education at a Foreign Law School whose curriculum provided training in a system based on the common law of England and that is otherwise equivalent to graduation from an Approved Law School, as determined by the equivalency determination process; and . . .”).

<sup>125</sup>*Id.* at 8(b)(2).

<sup>126</sup>*Id.* at 8(c)(4).

<sup>127</sup>*Id.* at 8(c)(4)(A).

<sup>128</sup>*Id.* at 8(c)(4)(B). (Of those 24 credits,”[a]pplicants may not count credits in any type of bar review or preparation course, independent study, directed study, research projects, or externships towards the required 24 hours of credit.”)

<sup>129</sup>*Id.* at Rule 8(c)(4)(c) (The rule states:

“The LLM degree must include completion of the following credit-hour requirements:

- (i) at least 2 credits in professional responsibility;
- (ii) at least 2 credits in a legal research, writing, and analysis course (which may not be satisfied by a research and writing requirement in a substantive course);
- (iii) at least 2 credits in a course on American legal studies, the American legal system, or a similar course designed to introduce students to U.S. law; and
- (iv) at least six credits in subjects tested on the UBE.”).



- graduated from a university or law school outside of the U.S. with a degree in law that qualifies the applicant to practice law in that jurisdiction and earned an LLM degree that meets the requirements of Washington Supreme Court APR 3<sup>130</sup> from an ABA-approved law school; or
- been admitted to the practice of law in any jurisdiction where the common law of England is the basis of its jurisprudence and have active legal experience for at least three of the five years immediately preceding the filing of the application.<sup>131</sup>

Qualifying LL.M. degrees must include “a minimum of 18,200 minutes of total instruction to include at least 12,000 minutes of instruction on principles of domestic United States law, which must include:

- A. a minimum of 2,080 minutes in United States Constitutional Law, including principles of separation of powers and federalism;
- B. a minimum of 2,080 minutes in the civil procedure of state and federal courts in the United States;
- C. a minimum of 1,400 minutes in the history, goals, structure, values, rules, and responsibilities of the United States legal profession and its members; and
- D. a minimum of 1,400 minutes in legal analysis and reasoning, legal research, problem solving, and oral and written communication.”<sup>132</sup>

#### **F. Wisconsin**

Like Washington, Wisconsin has two paths to qualifying for its bar exam. First, applicants who have law degrees from countries whose legal system is based on the English common law, and who have a license to practice law in that country and have done so “for at least three years of the last ten years prior to filing an application to take the Wisconsin bar examination” may apply to take the Wisconsin bar examination.<sup>133</sup>

Second, applicants who have a law degree from an accredited law school in their home countries who complete an LL.M. program also qualify to apply to take the bar examination so long as the LL.M. program meets a detailed set of requirements which include, inter alia, 24 hours of credit consisting of two semesters at least 13 weeks long and which is completed within 24 months of enrollment.<sup>134</sup> The program must include the following:

1. “A minimum of two semester hours of credit in the values and ethical responsibilities of the United States legal profession and its members.
2. A minimum of two semester hours of credit in legal research, writing and analysis, which may not be satisfied by a research and writing requirement in a substantive law course.
3. A minimum of two semester hours of credit in American legal studies, the American legal system or a similar course designed to introduce students to distinctive aspects and/or fundamental principles of United

<sup>130</sup>WASH. APR 3 (2018).

<sup>131</sup>*Id.*; Washington State Bar Association, *Admission by Lawyer By Bar Examination*, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/qualifications-to-take-the-bar-exam> (last visited Aug. 1, 2018).

<sup>132</sup>*Supra* note 131.

<sup>133</sup>WIS. SUP. CT. R. 40.055 (1) (2018).

<sup>134</sup>*Id.* at R. 40.055 (2).



States law, which may be satisfied by a course in United States constitutional law or United States or state civil procedure.

4. A minimum of six semester hours of credit in any of the subjects included in SCR 40.03 (2)<sup>135</sup> (a) or (b)."<sup>136</sup>

### The Implications for Law Schools

With no guidance from the ABA, law schools are free to fashion their programs as they wish. In the jurisdictions discussed,<sup>137</sup> the governing bodies overseeing the bar exam have imposed some measure of competence to qualify for their bar exams. In those states which allow LL.M. degree holders to sit for the bar exam, schools abide by the minimum requirements set by each state bar. But is that enough? Other than market forces, there is little incentive for law schools to offer anything other than a skeletal program. This necessarily translates into fewer opportunities for jobs<sup>138</sup> and, ultimately success passing the bar exam.<sup>139</sup> Notably, "because the LL.M. degree is not included in the formulation of [U.S. News] ranking formulations,"<sup>140</sup> law schools have little incentive to pay attention to its LL.M. curriculum to ensure that it offers a quality program.

<sup>135</sup> *Id.* at R. 40.03 (1)(2)(a)(b)(c) (Wisconsin court rules provide a laundry list of mandatory and elective courses required to satisfactorily complete a law degree.).

<sup>136</sup> *Id.* at R. 40.055 (2)(f).

<sup>137</sup> A summary of the requirements for each of those six jurisdictions discussed is noted in Illustration A, *infra*.

<sup>138</sup> State Side Story, *supra* note 12 at 2414 ("While [law schools] provide international students with a path of entry into the United States, they exude ambivalence about the students' relationship to the U.S. – and even to the U.S. legal profession – once the LL.M. studies have begun.")

<sup>139</sup> *Id.* at 2424 (discussing LL.M. students frustration in not passing the bar exam in the United States).

<sup>140</sup> *Id.* at 2415.



**Illustration A**

<b>State Requirements for LL.M. Degrees Qualifying Students to Sit for the Bar Exam</b>				
<b>STATE</b>	<b>CREDITS</b>	<b>COURSE REQUIREMENTS</b>	<b>DURATION</b>	<b>OTHER</b>
<b>California</b> <sup>141</sup>	Min. 20 units	12 credits must be in 4 subject areas tested on bar exam. One of those subjects is <b>Professional Responsibility</b>	Must be completed w/in 3 yrs.	Grading standards must be same as J.D. standards
<b>Georgia</b> <sup>142</sup>	26: 18 of which must be taught by f/t or emeriti	13 credits must include: <b>Introduction to U.S. Law; Legal Research and Writing; Constitutional Law; Civil Procedure or Georgia Practice and Procedure; Professional Responsibility.</b> Remaining credits must come from a menu of choices from two categories <sup>143</sup>	Must be completed w/in 36 months	
<b>New York</b> <sup>144</sup>	Min. 24 credits; no fewer than two semesters of at least 13 calendar weeks each	Min. 2 credits of <b>professional responsibility</b> ; min. 2 credits <b>legal research, writing, and analysis</b> min. 2 credits in <b>American legal studies</b> designed to introduce students to the American legal system; min. 6 credits on subjects tested on bar exam.	Must be completed w/in 24 months of matriculation	4 credit hours may be earned in the summer semester
<b>Vermont</b> <sup>145</sup>	Min. 24 credits	<b>Professional Responsibility; legal writing, American Legal Studies</b> Min. 6 credits in courses covered on bar exam	Must be completed w/in 24 months	
<b>Washington</b> <sup>146</sup>	Min. 18,200 minutes of instruction	12,000 minutes of instruction must include: min. of 2,080 minutes in <b>Constitutional Law</b> (including principles of separation of powers and federalism); min. 2,080 minutes <b>state and federal civil procedure</b> ; min. 1,400 minutes in “ <b>history, goals, structure, values, rules, and responsibilities of the United States legal profession and its members;</b> ” and min. 1,400 minutes in “ <b>legal analysis and reasoning, legal research, problem solving, and oral and written communication.</b> ”		
<b>Wisconsin</b> <sup>147</sup>	24 credits consisting of two semesters at least 13 weeks long	Min. 2 semester hours in <b>ethical responsibility, legal research, writing, and analysis, and American Legal Studies.</b> Min. 6 semester hours from a list of mandatory and elective courses proscribed by the Wisconsin State Legislature. <sup>148</sup>	Must be completed within 24 months of enrollment	

<sup>141</sup>Supra note 93 (In California, international students already admitted to practice law in their home countries who are in good standing, may sit for the bar exam. International students who are not yet admitted to the bar in their home countries, but who have a foreign degree, may be eligible to sit for the bar exam upon receiving an LL.M. degree, or upon successfully completing 20 units that includes a minimum of one course in 4 separate subjects tested on the bar exam.)

<sup>142</sup>Supra note 101.

<sup>143</sup>Id. at 4(a)(b)(Those two categories are divided into doctrinal courses (Contracts, Torts, Corporations, Administrative Law, Evidence, and Commercial Law) and skills course (Trial Advocacy, Appellate Advocacy, Negotiation, Mediation, Transactional Practice, Alternative Dispute Resolution, Fundamentals of Law Practice, Externship Placement, and Legal Clinic).

<sup>144</sup>Supra note 116.

<sup>145</sup>Supra note 124.

<sup>146</sup>Supra note 131.

<sup>147</sup>Supra note 134 at R. 40.055 (2).

<sup>148</sup>Id. at R. 40.03(2)(a)(b)





### III. Adapting to a New Time Zone: Challenges for International LL.M. Students

Due to the time limitations placed on international law students, and their diverse educational and legal backgrounds, the question arises whether these programs do, in fact, serve these students' needs. The study of law is necessarily the study of that system's cultural norms. "Law could be said to operate inseparably from society, and therefore, from culture."<sup>149</sup> Idiomatic language and cultural references which may be intuitive to American law students are frequently lost on international students.<sup>150</sup> Thus, by necessity, lessons must be slower and goals less ambitious. At the same time, the clock is ticking as the duration of most LL.M. programs range from 9-12 months. It is axiomatic that "[i]t is certainly impossible to master everything, so students must develop the ability to work quickly and efficiently in a new culture and new language." But do they? There is simply not enough time in a one-year program to "master everything."

Several factors play a role in designing a successful program tailored to the needs and strengths of LL.M. students. These factors include addressing language issues, confronting cultural distinctions between the United States' system of legal education and the students' previous studies, and distinguishing both the law and the legal practice of the United States with that of the students' home countries.<sup>151</sup> In short, students need to adapt to a "new time zone" one requiring a different rhythm. But to be successful, law schools need to slow down the LL.M. clock to allow students to adapt and become proficient in the American system of legal norms.

#### A. Overcoming Language Barriers

For many LL.M. students, English is not their first language. While these students earn high TOEFL scores, these scores do not adequately reflect a student's ability to follow class lectures or participate in class discussions.<sup>152</sup> Learning the language of the law is a challenge for most first-year law students, even those whose first language is English.<sup>153</sup> International students, whose English skills are not as developed as their local peers, take a significantly greater amount of time to read and analyze the law.<sup>154</sup> Lower fluency levels can also impair a student's reading comprehension skills, especially when that student is reading from complex and sophisticated legal sources.<sup>155</sup> Low reading comprehension skills similarly affect students' ability to identify the legal issue and the leading sources of law for that issue. In the classroom, LL.M. students struggle with the pace of the lectures, along with the cultural references and informal English.<sup>156</sup> More time must be provided to LL.M. students so that they can acquire the necessary legal English skills.

#### B. Learning A New Legal System

LL.M. students need to adapt to the legal system and legal culture of the United States.<sup>157</sup> As noted, common law and civil law systems require different types of legal analysis.<sup>158</sup> Common law systems apply the doctrine of stare decisis and rely upon precedent to establish legal rules. This requires American lawyers to distill the law from

<sup>149</sup> Gloria Sanchez, *A Paradigm Shift in Legal Education: Preparing Law Students for the 21<sup>st</sup> Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partners*, 34 San Diego L. Rev. 635, 650 (1997).

<sup>150</sup> Unless they admit to having difficulty, international students will typically just try to muddle through the assignment, often unsuccessfully. Often the professor is oblivious to the difficulty. The authors recall a moment in the classroom when teaching a case in which one of the parties was a "shipping company." One student was noticeably puzzled as to why a company in the business mailing packages was concerned about maritime law. Had the student not raised her hand to express her confusion, this basic lack of understanding would have doomed the student's understanding of the case.

<sup>151</sup> Spanbauer, *supra* note 26 at 419-422.

<sup>152</sup> See Colin Picker, et al., *Comparative Perspectives on Teaching Foreign Students in Law: Pedagogical, Substantive, Logistical and Conceptual Challenges*, 26 Legal Ed. Rev. 161, 172 (2016); see also Susan C. Warose, *Academic and Cultural Support for International LL.M. Students: Four Suggestions to Help Students Succeed* 4 (2013), <http://ssrn.com/abstract=2189830>.

<sup>153</sup> Jennifer Jolly Ryan, *Bridging the Law School Learning Gap Through Universal Design*, 28 *Touro L. Rev.* 1401 (2012) (stating, "Reading lengthy casebook assignments and professors' comments written in cursive, writing long briefs heavily penalized for grammar and citation violations, and sitting in a classroom for many hours while listening to professors' lectures often is foreign to today's students.").

<sup>154</sup> Picker, *supra* note 153 (stating that throughout their studies international students will typically take longer to read class materials than their local counterparts).

<sup>155</sup> *Id.*

<sup>156</sup> Spanbauer, *supra* note 26 at 400.

<sup>157</sup> Hanigsberg, *supra* note 27 at 589 (stating that students from civil law countries must "surmount not only the transition between two legal cultures, but also the differences between two systems of law.").

<sup>158</sup> *Id.* at 593.



cases and statutes.<sup>159</sup> Conversely, in civil law jurisdictions, legal rules are listed in codes.<sup>160</sup> Lawyers in those countries need to apply the rule to the case before them. It is a very different type of analysis and one that needs to be honed with practice.<sup>161</sup>

Nor is this difficulty just limited to the civil code/common law divide. International law graduates are schooled in their home country's system with its own unique paradigms.

They bring varied approaches and assumptions about legal analysis. A student who has excelled in memorizing Swiss Code provisions will be frustrated by having to use so many cases; an Italian student, who has the option to take or leave cases in her system, will eliminate U.S. cases she doesn't like; and a student from Ghana whose system is common-law based will be puzzled by the synthesis of cases that is peculiarly American. Their "logic" is not ours."<sup>162</sup>

It is not surprising, then, that many of these students have trouble adapting to a decidedly different analytical paradigm.

Our analytical paradigms spring from federalism, the common law, statutory interpretation, and tradition, among other things. These are unknown to the novice and are particularly puzzling to those schooled in different systems. Theoretically, we can introduce analytical paradigms formalistically, explicitly, or by inference. Our basic deductive-inductive paradigms . . . differ from those used in other cultures.<sup>163</sup>

Furthermore, the American legal system is a multi-tiered system of government. The three levels of government, federal, state, and local, is each composed of three branches: the legislature, the judiciary, and the executive. Each of these branches creates law. Students whose home jurisdictions are not similarly designed struggle to identify which level of government and which source of law governs an issue.<sup>164</sup> Part of this struggle is due to inexperience with inductive reasoning, and part is due to the time it takes to learn this complex legal structure. American students, starting in primary school, learn about civics and the United States system of government. Because of this early training, American J.D. students are more comfortable with the structure of the United States government and its system of laws.

American students are also comfortable with the notion of debate, critiques, and challenges to authority. Indeed, schooled in the American legal system, they come to understand that law evolves over time as rules change in response to criticism and changing social mores. American law students learn to offer critical commentary on judicial opinions and statutes. In contrast, for some LL.M. students, criticism of law is not intuitive and, in some cases, frowned upon. Some might "have legitimate fears based on personal experience that if they criticize [sic] law enforcement they may suffer reprisals."<sup>165</sup> These students may shy away from offering in class critical analysis. Furthermore, they may have a deep-seated distrust of legal authority, which can impact how they analyze and apply the law.<sup>166</sup>

<sup>159</sup>*Id.*; see also Jill J. Ramsfield, *Is "Logic" Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom*, 47 J. Legal Educ. 157, 186 (1997) (Nor is there uniformity among common law systems. "Even those international students for whom the common law method is familiar may still experience odd interpretive clashes. South Africa's use of cases differs from Ghana's, which differs from ours.").

<sup>160</sup>Hanisberg, *supra* note 29 at 594.

<sup>161</sup>See Picker, *supra* note 153 at 168. The same can be said for research skills. See also Catherine A. Lemmer, *A View from the Flipped Side: Using the Inverted Classroom to Enhance the Legal Information Literacy for the International LL.M. student*, 105 Law. Lib. J. 462, 463 (2013) ("This is not to imply that U.S. Legal Education is superior to foreign legal education. It is simply to acknowledge that different legal systems require different approaches and skills.").

<sup>162</sup>Ramsfield, *supra* note 160 at 185.

<sup>163</sup>*Id.* at 186 (The problem this difference creates can, at times, be insidious. Rather than see students' inability to adapt to the system of legal analysis used in American law schools as a reflection of these cultural differences, frustrated professors may view these students as simply incapable of adapting).

<sup>164</sup>*Id.* (describing the frustration of students from civil law jurisdictions with researching U.S. law); see also Hanisberg, *supra* note 27 at 589 (describing the need for a bridge between the undergraduate legal training of civil law attorneys with their graduate training in U.S. law).

<sup>165</sup>See Picker *supra* note 153 at 169-70.

<sup>166</sup>*Id.*



### C. *Adapting to a New System of Education*

#### 1. *The Classroom Dynamics*

For most LL.M. students, their previous legal education is markedly different from that of American law schools.<sup>167</sup> Often these differences relate to their home country's cultural norms.<sup>168</sup> These norms shape how LL.M. students interact with their fellow students and professors.<sup>169</sup> In American law schools, class discussions and participation play a pivotal role in learning.<sup>170</sup> In many nonwestern cultures silence is valued.<sup>171</sup> Students from these cultures are discouraged from asking questions during class.<sup>172</sup> In addition to valuing silence, some cultures disapprove of students challenging professors.<sup>173</sup> Class discussions and group exercises may be difficult for students from those countries that value silence and respect for faculty.<sup>174</sup>

Another distinction is that in their previous education many LL.M. students attended lectures where they did not interact with faculty.<sup>175</sup> The American system depends on students discussing the issues from assigned readings and responding to the professor's questions about those issues.<sup>176</sup> The Socratic Method encourages quick and critical thinking. Challenging authority is often encouraged. Students, who come from schools that rely on the lecture format, do not have experience coming to class prepared to debate rules or discuss hypotheticals.<sup>177</sup> Questioning professors and contributing contrasting views pose a big challenge for those international students.<sup>178</sup>

#### 2. *Academic Honesty*

In addition, different cultures have varying views on plagiarism and academic honesty.<sup>179</sup> Law schools in the United States have a strict interpretation of plagiarism, and impose harsh penalties, including expulsion, on students who plagiarize.<sup>180</sup> Other countries do not view plagiarism in the same light.<sup>181</sup> Students from those nations struggle with the concept of plagiarism and the need to cite to sources.<sup>182</sup> Besides the divergent views on plagiarism, the United States system of citation is confusing and challenging for many international students, particularly those from civil law countries. To those students, the precision and level of detail required to cite sources seems superfluous.

<sup>167</sup> Picker, *supra* note 153 (stating that throughout their studies international students will typically take longer to read class materials than their local counterparts).

<sup>168</sup> *Id.*

<sup>169</sup> Spanbauer, *supra* note 26 at 421 (where the author noted that classroom behavior such as "when and how frequently a student is expected to participate in classroom discussion, whether the teacher is respected as the authority or questioned or challenged, and how much feedback students should expect from their teacher" are culturally driven).

<sup>170</sup> Hanigsberg, *supra* note 27 at 592.

<sup>171</sup> Picker, *supra* note 153 at 173.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Kissane Brostorr, *supra* note 24 at 567; *See also* Hanigsberg, *supra* note 27 at 592-93.

<sup>176</sup> Hanigsberg, *supra* note 27 at 592.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> Picker, *supra* note 153 at 178; Spanbauer, *supra* note 26 at 437-38 ("...the concept of plagiarism and citation usage varies from culture to culture, due in part to differing views about respect for the written word and for individual ownership of that written expression. Instruction in conventions unique to U.S. law schools is critical due in large part to serious sanctions that attach to plagiarism at U.S. law schools.").

<sup>180</sup> Robin Nilon, *The Calculus of Plagiarism: Toward a Contrastive Approach to Teaching Chinese Lawyers*, 2 S. Carolina J. Int. L & Bus., 1, 5-6 (2005-2006) (citation omitted) (American students, inculcated with the notion of what constitutes plagiarism throughout their education (legal and otherwise) are familiar with plagiarism norms and expectations, even if they do not always abide them. "[In purely practical terms, rhetorical preferences reflect a lifetime of academic training."]...noting the problem in the context of teaching Chinese students; Whether plagiarism reflects certain rhetorical preferences or ethical lapses, international students studying law in the United States are not schooled in traditional notions of plagiarism.).

<sup>181</sup> Picker, *supra* note 153 at 178.

<sup>182</sup> Ramona Tang, *Academic Writing in a Second or Foreign Language 6* (2012) (highlighting studies which show students uncertainties about textual borrowing and citation practices).



### 3. Exams

One additional challenge international students must meet to succeed in law school is learning how to take American law school exams. For many LL.M. students, their previous exams were oral.<sup>183</sup> Almost uniformly, graded assessment in American law schools is completed in writing, either in the form of exams or papers.<sup>184</sup> Often the written exams are several hours long and require sophisticated analysis.<sup>185</sup> This type of analysis is foreign to many LL.M. students. The United States, like most common law systems, require inductive problem-solving analysis. Code based civil law jurisdictions apply deductive reasoning when analyzing the law. For students from civil law countries, it can be a challenge to jump from applying a rule to a case to discerning the rule from a case. Adjusting to written exams and inductive reasoning is a large obstacle to overcome.

Presently LL.M. students face a very steep learning curve, and they simply do not have enough time to reach its summit. These students enroll in U.S. law schools to attain a certain level of competency in U.S. law and legal English. The current structure of LL.M. programs cut short their time in school and prevents them from gaining the knowledge and skills they desire.

## IV: Resetting the Clock: Recommendations

### A. Standard Time Zones: *It is Time for the ABA to Establish Uniform Learning Objectives and Outcomes*

If LL.M. students hope to work in the legal profession in the United States, either by passing the bar or through law school internships, it is incumbent upon law schools to provide education and training to meet the legal market's expectations of them. The ABA must lead the way, much as it does in establishing standards for J.D. programs, and establish standards and uniform learning objectives and outcomes for LL.M. graduates of American law schools.

#### 1. Experiential Learning

For several decades, legal professionals have consistently and clearly criticized legal education, complaining that graduates are ill prepared to practice law.<sup>186</sup> Recently in 2015, a survey of law partners and associated showed that 95% of those surveyed believe law students lack the skills necessary to practice law.<sup>187</sup> After decades of criticism, the American Bar Association, in 2017, finally responded to these complaints by revamping their standards and rules of procedure for the approval of law schools. These new reforms add six required credit hours in experiential learning to the juris doctorate degree.<sup>188</sup>

Experiential courses are designed to “integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302, develop the concepts underlying the professional skills being taught...”<sup>189</sup> These courses are designed to prepare students for the practice of law. While these requirements are not applicable to international LL.M. students, LL.M. students, like their juris doctorate peers, need and expect to be taught the skills needed to practice law in the United States.<sup>190</sup>

<sup>183</sup> Kissane Brostorr, *supra* note 24 at 568.

<sup>184</sup> Jolly-Ryan, *supra* note 154 at 1403.

<sup>185</sup> *Id.*

<sup>186</sup> See Aliza Kaplan & Kathleen Darvil, *Think [and Practice] like a Lawyer: Legal Research for the New Millennials*, 8 *Legal Comm. & Rhetoric* 153, 157 (2011).

<sup>187</sup> LexisNexis, *Hiring Partners Reveal New Attorney Readiness for Real World Practice* (2015), [https://www.lexisnexis.com/documents/pdf/20150325064926\\_large.pdf](https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf).

<sup>188</sup> *Supra* note 30 at Standard 303(3(i)(ii)).

<sup>189</sup> *Id.*

<sup>190</sup> Coping, *supra* note 1 at 237. (stating that in a recent survey, LL.M. students indicate that they attend law school in the United States in large part to achieve global legal literacy, which includes having the opportunity for non-formal learning and the acquisition of tacit skills).



## 2. Learning Objectives and Outcomes

Law schools have an obligation to provide LL.M. students with a credible degree. It follows, then, that the ABA's Section on Legal Education should impose the same objectives and learning outcomes for LL.M. degree candidates as are already established for J.D. degree candidates. At the very least, the objectives and learning outcomes should be the same for those LL.M. candidates who plan to sit for the bar as for the J.D. candidates.

Standard 301, *Objectives of Program of Legal Education*, states that law schools should maintain a rigorous program of education that "prepares its graduates for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession."<sup>191</sup> For LL.M. students who hope to sit for the bar exam, no less an objective justifies the high cost of their degree.

LL.M. graduates expect that their degree should attest to a certain degree of competency. The ABA articulates, in Standard 302, *Learning Outcomes*, that at a minimum law school learning outcomes should establish competency in "knowledge and understanding of substantive and procedural law; legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; exercise of proper professional and ethical responsibilities to clients and the legal system; and other professional skills needed for competent and ethical participation as a member of the legal profession."<sup>192</sup> Why should these same learning outcomes not be applied to LL.M. students, particularly those who intend to sit for the bar? If states permit foreign trained lawyers to be admitted to the bar with an LL.M. degree, then the ABA needs to be the gate keeper for the public, ensuring that a license to practice law provides a standard level of competency.

The ABA's Section on Legal Education needs to do more than adopt a position which states, "It is the long-standing position of the Council of the Section of Legal Education and Admissions to the Bar that no graduate degree is or should be a substitute for the J.D., and that a graduate degree should not be considered the equivalent of the J.D. for bar admission purposes."<sup>193</sup> In doing so the Council is effectively putting its head in the sand, and ignoring the six jurisdictions which permit LL.M. degree holders to sit for the bar on the basis of having acquired an LL.M. degree from an ABA-approved law school.

If the ABA is concerned about devaluing the J.D. degree, it need not be. A J.D. program, which requires the completion of 83 credit hours, is inherently more intense than the one to two year course of study for an LL.M. degree.<sup>194</sup> As a consequence, the legal market places a higher value on a J.D. diploma than it does on a LL.M. diploma and will continue to do so.<sup>195</sup> However, despite the difference in intensity of the program and value placed on it by the legal market, the objectives of bar preparation and educating students to be responsible and ethical members of the legal profession should be universal goals for all law school degree candidates. Indeed, with the increasing globalization of the legal market, LL.M. students have a unique role to fill. Accordingly, the learning outcomes for both J.D. students and LL.M. students should be standardized and uniform. Law schools should not have a two-tiered system of education that imposes different objectives and learning outcomes for different students. Yes, a J.D. will continue to hold more value because it requires more of students, but the goals and learning outcomes for students studying to enter the legal profession should remain constant.

<sup>191</sup> *Supra* note 30 at Standard 301. Standard 301 further requires that law schools establish and publish learning outcomes designed to achieve the objectives. *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> Council Statements, *supra* note 15.

<sup>194</sup> *Supra* note 30 at Standard 311.

<sup>195</sup> Silver & Ballakrishnen, *supra* note 3 at 49.



***B. Resetting the Clock: Providing More Time, Committing to English as a Second Language Instruction, and Creating a Two Track Approach to the LL.M. Degree***

Using a set of standard objectives and learning outcomes, law schools should develop curricula to meet their students' goals. Because LL.M. students have different goals for their degree, the curricula should cater to those goals and take a two-track approach. There should be a track for students who wish to learn more about the American legal system and improve their legal English; there should also be a track for students who wish to gain practical experience and/or obtain a license to practice law in the United States. The alternate "bar prep" track should be more rigorous and contain more required courses and more credit hours than the "non-bar prep" track. There are, however, fundamental components that should be included in both curricula to successfully foster learning and to meet the unique needs of international students. The recommendations below will first discuss the shared components of the two programs, and then will detail the components of each track.

***1. Early Summer Sessions***

One way to assist LL.M. students in overcoming the host of challenges they face in a short amount of time is to offer early summer classes. These classes are designed to help them acclimate to American law schools and its legal system. The most obvious advantage of this solution is that it does not encroach upon the 22 to 26 credit hours that the typical LL.M. program requires.<sup>196</sup> The objective of the summer orientation course is to help the students succeed in their other courses through early and repeated exposure to the American legal education system and system of government.<sup>197</sup>

The summer course should cover topics such as introduction to the common law analytic techniques, the American legal system, introduction to American teaching methods, introduction to legal research and writing, legal citation rules, exam taking skills, and case briefing.<sup>198</sup> The main benefit of this course is that prior to starting classes in the fall, LL.M. students are exposed to these foreign concepts.<sup>199</sup> For example, by introducing them to the subjects of American teaching methodology and common law legal analysis, LL.M. students will feel more comfortable in their Fall classes, and hopefully gain the confidence needed to participate in class discussions. Summer lessons in practical skill training on legal citation, case briefing, exam taking skills, and legal research, prepares LL.M. students for the fall semester. This will especially ease the transition for students enrolled in a legal writing and research course or a seminar paper course.<sup>200</sup> The goal of the summer course is to help LL.M. students adjust and adapt to the cultural differences between their prior legal education and practice with the American legal and educational system.

Another obstacle to learning that must be addressed prior to the start of the first semester is the language barrier. Summer orientation programs should include courses in legal English.<sup>201</sup> These courses help English as a Second Language (hereinafter "ESL") students improve their language skills. The language of law is often complex and nuanced.<sup>202</sup> International students, even those who have a high degree of English fluency, will struggle with reading and understanding sources of law.<sup>203</sup> By enrolling in a legal English course, students gain familiarity with the United States legal system and with legal analysis and writing.<sup>204</sup> This familiarity helps them to better follow class lectures, feel more comfortable participating in class discussions, and to complete written assignments in the fall.

<sup>196</sup> See Hanigberg, *supra* note 27 at 591.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 592-596 (describing the specific objectives for her orientation course for international LL.M. students).

<sup>199</sup> *Id.* at 593.

<sup>200</sup> *Id.* at 596.

<sup>201</sup> Spanbauer, *supra* note 26 at 411.

<sup>202</sup> Picker, *supra* note 153 at 174.

<sup>203</sup> *Id.*

<sup>204</sup> Spanbauer, *supra* note 26 at 411.



The summer sessions allow international students to get an early start at gaining the competency required by Standard 302, Learning Outcomes. These introductory classes familiarize students with U.S. substantive and procedural law and with legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context.<sup>205</sup> By attending summer courses, international students beat the clock by adapting to U.S. law school before the pressure cooker of the first semester begins.

## **2. Imbedding ESL Instruction in the Program**

For international students to succeed in law school, ESL instruction and support must be implemented throughout the entire program.<sup>206</sup> The goal is to help students adapt to written and oral legal discourse in the United States.<sup>207</sup> Instruction focusing on the writing process, grammar and syntax, critical reading skills, plain language versus legalese, and inductive reasoning help to raise the students' English fluency, enabling them to read with greater understanding, write clearly and intelligibly, and speak with confidence.<sup>208</sup>

Following a legal English class in summer session, ESL instruction should continue with and be an integral part of a required legal writing and research course. ESL classes should be interwoven throughout the course, allowing students to apply the ESL skills they are acquiring to the professional skills they are learning in the writing course. By applying both sets of skills to a practical assignment, students' learning is reinforced. If this skill application is repeated with multiple assignments, students will achieve the learning outcomes set forth in Standard 302.

Besides incorporating ESL instruction into a legal writing and research course, students should continue with ESL sessions throughout their time in the LL.M. program. Students should have mandatory appointments with ESL faculty to review the students' writings. This is of special significance when a student is enrolled in a course which requires a final paper for assessment.<sup>209</sup> Feedback from an ESL faculty member on their writing and the ability of the student to self-reflect on those critiques provides them with opportunities to learn from the writing process and become an effective legal writer. These mandatory sessions in turn serve the students in gaining the competency ABA Standard 302 requires.

## **3. The Two-Year Bar Track Curriculum**

It is essential that LL.M. programs provide international students the time and space needed to successfully prepare for their careers once they graduate. Because they take longer than their J.D. peers to read through material, all while trying to adapt to new legal and educational systems very different from their own, they need more time to process what they learn. That added time needs to be built into their programs. For those who wish to sit for the bar or to gain practical experience working in a U.S. legal setting, LL.M. degree programs should be expanded from the traditional one-year 22 to 26 credit course of study to a two-year, 32 credit program.

The curriculum described below meets the requirements of the six states that allow LL.M. degree holders to take the bar.<sup>210</sup> It also meets the requirements of Standards 301 and 302 of the ABA's Program of Legal Education.<sup>211</sup> The recommendations are as follows:

<sup>205</sup> *Supra* note 30 at Standard 302.

<sup>206</sup> Spanbauer, *supra* note 26 at 436 (discussing the need for ESL instruction for non-native English speakers); Susan C. Wawrose, *Academic and Cultural Support for International LL.M. Students: Four Suggestions to Help Students Succeed* 4 (2012), <http://ssrn.com/abstract=2189830> (discussing need for ESL instruction for international law students).

<sup>207</sup> Spanbauer, *supra* note 26 at 419-20 (discussing the need to train ESL students in U.S. academic discourse).

<sup>208</sup> *Id.*

<sup>209</sup> The authors recognize that professors might be reluctant to allow such support as it might raise a fairness issue. Issues such whether students are graded pass/fail, and whether they are subject to the same grading curve as their J.D. peers might be relevant. With that in mind, law schools should consider how best to incorporate such support into their programs given their available resources.

<sup>210</sup> *Seesupra* Table pp. 20-21.



● Prior to the start of their first semester, international students should be required to complete a two-credit introduction to United States law and legal English course.

● Students should take courses on six of the seven subjects tested on the Multi-State Bar Exam.<sup>212</sup> This requirement comprises approximately 18 credit sand meets the learning outcome of Standard 302 (a) which requires knowledge and understanding of substantive and procedural law.<sup>213</sup>

● With the ABA’s objective of preparing ethically responsible attorneys, LL.M. candidates should also take two credits of professional responsibility.<sup>214</sup>

● Like their J.D. peers, LL.M. students, who wish to sit for the bar, should be required to take *two semesters* of legal writing and research, totaling a minimum of four credits. This requirement would meet the learning outcome set forth in Standard 302 (b), which is to gain competency in “legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context learning.”<sup>215</sup> The two-semester course would allow international students to acclimatize to inductive reasoning and U.S. legal writing and research more slowly and more deliberately than the one-year program permits.

● LL.M. students should be required to take a minimum of two credits worth of experiential courses. Experiential learning is key to integrating the course work and knowledge of substantive and procedural law with the legal skills courses. It also provides international students with the practical experience in U.S. law offices that they seek.

The required courses in this two-year curriculum total 28 credits and leave four elective credits of the student’s choice.<sup>216</sup> Importantly, this curriculum’s time table allows students to enroll in seven to eight credits worth of courses each semester. By giving the students more time to devote to each course, students can progress slowly and deliberately giving them the extra time essential for their success.

#### **4. The One-Year No Bar Curriculum**

For those international students who do not wish to study for the bar or gain practical experience working in a U.S. law office, a curriculum of 22 to 26 credit hours is sufficient to gain the competence the student desires. While this curriculum would not necessarily prepare graduates for practice in the United States, it would allow students to gain a strong familiarity with U.S. law and practice. These students do not need the extra year to prepare for the bar, but they do need their time directed so they can achieve a sufficient level of knowledge and skills to make the degree meaningful. The recommendation for such a course of study is as follows:

● Like the Bar-Track Curriculum, prior to the start of their first semester, students should complete a two credit Introduction to United States Law and Legal English class.

● Students should be required to complete a *three-credit legal writing and research* course introducing students to “legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the

<sup>211</sup>Supra note 30 at Standards 301 and 302.

<sup>212</sup> National Conference of Bar Examiners, *Preparing for the MBE*, <http://www.ncbex.org/exams/mbe/preparing/> (last visited Aug. 2, 2018)(The seven subjects tested on the Multi-State Bar Exam are civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts.).

<sup>213</sup>Supra note 30 at Standard 302 (a).

<sup>214</sup>*Id.* at Standard 301.

<sup>215</sup>*Id.* at Standard 302.

<sup>216</sup>The authors recognize that this leaves little room for students to take elective courses in areas such as business transactions, immigration law, and patent law, to name just a few. However, the authors posit that the primary goal of the two-year bar track curriculum is to give students more time to develop the skills they need to pass the bar exam. Adding more credits to allow for more elective choices would only perpetuate the existing problem of trying to cover too much ground in too short a period of time.





legal context.”<sup>217</sup> The legal writing and research course must be at least three credits in order to allow for a sufficient amount of time to be devoted to ESL instruction, legal analysis, legal research, and legal writing.

- With the ABA’s objective of preparing ethically responsible attorneys, LL.M. candidates should also take two credits of professional responsibility.<sup>218</sup> Thus, students will gain the competence in ethics and professional responsibility set forth in Standard 302.<sup>219</sup>

- Because experiential courses serve a pivotal role in connecting the dots between substantive law, procedural law, and professional skills, international students should be required to take two credits in experiential coursework. This would allow the students to achieve the learning outcomes set forth in Standard 302.

The total required courses in the one-year curriculum total nine credits, leaving 13-17 elective credits of the student’s choice. Thus, this program provides greater flexibility than the two-year curriculum. This is important for the non-bar track students, because it allows students to customize their course of study to meet the needs of their home jurisdiction’s practice. At the same time, this program achieves the learning outcomes set forth in Standard 302, because it provides them with knowledge of substantive and procedural law; the skills of legal analysis, legal research, and written and oral communication; an understanding of ethical rules; and experiential coursework that integrates the knowledge of U.S. law with legal skills and legal ethics.<sup>220</sup> If during the course of study, a student decides to take the bar, the student can easily switch into the two-year bar preparation program. In the second year, that student would only have between 6-10 credits to finish the degree.

## V. Conclusion

It is time for the ABA to catch up to the realities of the legal marketplace. With increasing interest by international students in an American law school education, the ABA can and should assume responsibility to ensure a certain degree of competence for all graduates of American law schools, be they J.D. or LL.M. graduates. Establishing uniform learning outcomes for international LL.M. students is a good first step towards achieving that goal. To that end, law schools can easily allow LL.M. students to develop and hone their legal skills, whether they choose to sit for the bar exam and seek employment in the United States or return to their home countries with an additional American credential. Instead of forcing students to work to acquire some basic skills in a short period of time, law schools need to reset the clock and slow it down to allow students the time they need to succeed.

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<sup>217</sup> *Supra* note 32 at Standard 302(b).

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* at Standard 302(c).

<sup>220</sup> *Id.*