

Study on Bilingual Teaching of Franchising Law in China

XIAO Xiaowen

Franchise Management School
Beijing Normal University, Zhuhai
Faculty of law, University of Macau
Zhuhai, Guangdong, PR China
Special Administrative Region, Macau, PR China
Email: mike-xiao@126.com

ZHAO Yu

Franchise Management School
Beijing Normal University, Zhuhai
Zhuhai, Guangdong, PR China
Email: 35350713@qq.com

Abstract—The remarkable economic development in China and the globalization tide, as well as the internationalization of higher education have promoted the talents exchange between China and all over the world. To cope with fierce international competition with the bilingual ability as the era of global economic integration and knowledge economy knock at the door of China, bilingual legal teaching has become an important measure for the colleges and universities in China to cultivate comprehensive legal talents after China's entry into WTO. The paper examines the challenges of bilingual legal teaching of franchising law in selection of teaching materials, development of teaching resources, the evaluation of teaching results, the flexibility of teaching pedagogies and the selection of teaching mode. Some countermeasures are put forward in teaching system, the compilation of teaching materials, bilingual teacher cultivation, as well as the teaching methodology.

Keywords—*bilingual teaching; franchising law; challenge; countermeasure*

I. INTRODUCTION

Since franchising was introduced into China in the 1990s, it has experienced a spectacular development in the last thirties. The tremendous development of franchising has pushed the study and legal governance on the franchising activities to meet the requirement of the social reality. The teaching of franchising law has also been undergoing continuous changes with the development of higher education reform in the teaching method and teaching mode. The frequent international exchange urges the higher education in China to enhance the talent cultivation and teaching quality of undergraduate education to adapt to the social demands. In 2001 the Ministry of Education began to carry out the "Bilingual Teaching Course Reform Plan" to improve the work of bilingual teaching reform construction, in which the ratio of bilingual teaching in legal education should be at least 5% to 10% of all courses. That ratio has become a criterion of the higher education evaluation. On a Bilingual Teaching Seminar sponsored by Higher Education Department of the Ministry of Education, it is pointed out that the following achievements can be made: improve legal knowledge and quality; enlarge legal English vocabulary and legal English

level and introduce advanced education ideas and methods from foreign countries.[1]

II. THE NECESSITY AND FEASIBILITY OF IMPLEMENTING BILINGUAL TEACHING IN THE FRANCHISING LAW

In order to gain a sustainable and healthy development of legal education in colleges and universities a series of measures have been adopted, such as the use of bilingual teaching, case study and multimedia teaching methods. Bilingual legal teaching in the franchising law has met the requirements of economic globalization and development, international communication and cooperation, cultivating high-quality talents with international competitiveness as well as the reality of franchising development in China. The implementation of bilingual teaching in the franchising law is necessary and feasible.

A. It is the demand of foreign exchange in the economic development and adapts to the students' social practice

After China's accession into WTO, there is a great demand for the talents who can have a good command of economic and international economic law in different jurisdictions. The reality of fast franchising development in China challenges the fact of shortage of those talents. The culture of law and the importance of law in cross-cultural communication activities determine the necessities of bilingual teaching in the franchising law. Legal systems, which are rooted in their cultural traditions, constitute an important component of the cultural system. The understanding of different legal systems can help to understand more deeply the characteristics of different legal cultures. Bilingual legal teaching meets the requirements of cross-cultural communication capability, and helps achieve the objectives of cultivating legal English talents. [2] According to a count by China Legal Talent Net, 85% of positions in legal profession require that the employees should be good at legal English. 64% of foreign cases cannot be settled due to lack of the legal workers who can thoroughly understand legal English. 82% of the legal professionals has only legal background without mastering English well.[3] It is obvious that Chinese higher legal education should keep up with the times, focusing on cultivation of judges, prosecutors,

lawyers and other legal professionals, including the all-round talents who can proficiently master English to deal with international economic and legal affairs.

B. It is the necessity of teaching franchising law itself.

Till today there is no special Franchise Law in China and the regulations governing franchising activities are scattered in different civil & commercial laws, which include the Intellectual Property Law, the Contract Law, Law Against Unfair Competition, General Principles of the Civil Law, Law on Protecting Consumers' Rights and Interests, Law on Product Quality, Anti-Monopoly Law, Company Law, etc. The promulgation of Regulations on the Administration of Commercial Franchise by the State Council, accompanied by two implementation measures issued by the Ministry of Commerce—the Administrative Measures for Information Disclosure of Commercial Franchise and the Administrative Measures for Archival Filing of Commercial Franchise shows the establishment of a legal framework to support the business operation in the franchising development. Franchise covers a large scope of over 70 industries involved in the catering, hotel management, original retail, commercial services, education & training, as well as health & recreation, etc. The basic theories of civil law, intellectual property law and contract law constitute the main part of franchising law. It can be said that the franchising law is the typical trading law, ensuring the economic stable movement. With the fast development of international franchising more and more international brands squeeze into Chinese market, while the legal system of franchising law in America, Australia, United Kingdom and some other European countries is much more advanced and complete because they have a comparative long history of franchising development. China is a civil law country, while England and America use case law, there are a great many differences in the legal system. In the teaching of franchising law, the Chinese laws and regulations should be taught, meanwhile the mature franchising legislations in western countries should be borrowed so that the students can have a comprehensive understanding of franchising law by comparison. So bilingual teaching is indispensable.

C. Bilingual teaching is feasible in franchising law teaching practice.

Bilingual legal teaching in franchising law is feasible. It is said that franchising was originated from America, Australia and European countries, the definition, legal theory, laws and regulations can be used as a reference by Chinese franchising legislative. The case law traditions in common law enables the learning of legal English and improves communicative competence in experiencing legal activities. The common law legal system highlights the practical utility and experience of law. The teaching of basic concepts, principles and legal theory can help students master the basic legal knowledge in franchising, the basic international rules and international awareness of basic legal rules. In fact many Chinese legislations are closely related to the international legislation without distinct difference in definition and basic theories. For example, the Freedom of Contract Principle, the Principle of Honesty & Good-faith and the Principle of Autonomy of Will are the basis of market economy and rule of law. The

understanding of these principles is almost the same in different countries. Many clauses in contract, such as the rule of offer & acceptance, contract formation, restitution, contract interpretation, contract modification, remedies, performance, discharge, etc. are consistent with each other. The rules and theory in some other laws like the company law, property law and tort law are interlinked. The key point is how to use these similarities to teach franchising law.

III. THE PROBLEMS OF BILINGUAL TEACHING IN THE FRANCHISING LAW

A. Lack of suitable bilingual teaching materials or textbooks.

Nowadays the bilingual teaching materials in legal education include legal English textbooks, original edition English books and some bilingual books about Chinese law. Till today Chinese Franchise Law has not been laid down, laws governing franchising activities can only be found in different civil & commercial laws. The teachers have to explain the rules and theories in franchising by combining domestic civil & commercial law, such as contract law, property law, company law, and intellectual property law, etc. at the same time many cases adjudicated by the courts should be introduced so that the students can understand the background and reasons behind the law because case study teaching methods have received widespread attention from law schools in various universities. In the bilingual teaching the franchising law or code or regulations in America, Australia or other western countries should also be introduced. The West Nutshell Series, Contracts (the 4th edition) written by American author Cloude D. Rouwer & Gordon D. Schaber is a very good book to explain American contract law in English, but it requires that the readers should understand the theory of contract law thoroughly and have a good command of English. Moreover China's Civil Law written by professor Yikun Zhu and published by Legal Press in August in 2003 is a book with characteristic to explain Chinese civil law in English, the content involving in important theories, clauses and cases in Chinese civil law. Other bilingual teaching materials are English version of relevant Chinese legal clauses. If the above materials are used it is difficult for the students to master legal English idiomatically in western countries. There is also a high requirement for teachers because they have to be both eloquent debaters and highly professional and seasoned with law practice.[4] For a teacher without practical experience, it is not easy to manage teaching methods, such as case study teaching and practical teaching in English.

B. The serious shortage of teaching staff.

Teachers are the key factor of bilingual teaching. The serious insufficient teaching staff have greatly restricted and hindered the development of bilingual teaching in higher education in China. It is clear that the teachers' English proficiency, professional qualities, academic research ability and teaching art have played a decisive role in ensuring the quality of bilingual teaching. The resources of bilingual teaching staff are limited to two aspects: one is the English teacher who goes for further education in some specialty; the

other is academic teacher with proficient foreign language skills. The problem is that although the English teachers can speak and use English freely, their knowledge of specialty is too limited and not deep enough. However for the teaching of franchising law, not only the Chinese legal systems and principles related to franchising should be introduced in English, but also the western legal systems, principles and culture should be introduced, which cannot be done by the English teachers. The ideal bilingual teaching staff come from the legal academic teachers with proficient English background. But the fact is that the legal academic teachers are so limited and rare.

C. Lack of suitable teaching methodology due to insufficient theoretical and practical research.

Bilingual teaching involves in different knowledge of subject, such as pedagogy, sociology, linguistics and psychology. Only the methodology research is far enough to be in the demand of bilingual education development.[5] The traditional legal teaching methods are monotonous, rigid, outdated and dominated by didactic teaching and indoctrination, insufficient research and discussion are done in teaching methods. More importance is attached to teaching theory but practical skill is neglected. Sometimes some teachers use foreign language in legal teaching throughout the class without considering the students' English level, some others adopt a grammar translation method to explain legal theory, the students are passive recipients without discussion, so they are tired of remembering legal words and perceiving the sentence structure. They don't form the habit of thinking independently with no analytical and reasoning ability. Of course they feel it difficult to understand what the teachers say and are reluctant to devote themselves to the bilingual study.

D. Lack of flexibility in the assessment of bilingual teaching results.

The traditional legal education is teacher-centered, ignoring students' vocational skill training, neglecting the understanding and digesting of subject knowledge, so the evaluation is usually closed-book examination to check how much the students have mastered. But for the franchising law, the practical usage and social service functions of the law should be paid more attention. The one-way evaluation method is inflexible, which easily causes the phenomenon of high scores but low practical ability.

IV. COUNTERMEASURES OF IMPROVING BILINGUAL TEACHING IN THE FRANCHISING LAW

With the reform of Chinese legal professional curriculum and its teaching methodology, the goal of bilingual teaching should be student-centered, teacher-led instruction using two-way teaching method.[6] Appropriate bilingual teaching textbooks suitable for the franchising law should be compiled as soon as possible, modern teaching methods, such as audio-visual teaching and case study method should be used from beginning to the end, more and more bilingual teaching staff should be trained and the evaluation system should be reformed to test students' understanding of legal theory, as well as their ability to apply legal theory in practice.

A. Developing and compiling appropriate bilingual teaching materials.

It can be said that lack of proper materials and resources constitute the bottleneck or the biggest obstacle to bilingual legal education in higher education. Three kinds of bilingual teaching materials are used at present, including original edition English textbooks, textbooks edited by Chinese faculty, and some translation materials. Each has its own advantages and disadvantages. For example the original edition teaching materials embody the progress of the theory, the advanced study of theoretical knowledge, as well as the latest development trends of practice, but there exists the problem of large length, expensive charge, and deviating domestic situation. [7] As far as the franchising law is concerned, compiling the bilingual textbooks or materials by Chinese experts or Sino-foreign experts would be the best choice. In the compilation more attention should be paid to both the statutes and case law involving franchising in western countries and Chinese legal principles, rules, regulations and systems, all of which should be included and put into the syllabus. Essential and difficult points should be annotated in Chinese and specialized vocabulary should be put as appendix. Many domestic and foreign cases, even the latest academic researches and papers can be integrated into the materials so that the students can arouse their interests to gain a contextualized understanding of the legal systems, legal terms and concepts, as well as convey key information about franchising regulations in different jurisdictions.

B. Reforming and innovating teaching methodology, establishing student-centered incentives and teaching students in accordance with their aptitude.

The purpose of bilingual teaching is to serve professional study based on language activities, cultivate the students' ability to absorb knowledge in a foreign language through diverse approaches, think and solve problems in an English thought pattern.[8] Traditional legal teaching approach ignores to train the students' innovative spirit and creative abilities.[9] In the bilingual teaching of franchising law, a principle of "combination of theories and practice" should be adhered to. The theory of content-based instruction can be introduced so as to cultivate the students' language proficiency and strengthen the subject knowledge.[8] The progressive and cooperative bilingual teaching mode is encouraged, because the teaching process of this mode reflects the professional skills and practicability, stimulates the enthusiasm of teachers and students, and especially embodies the students' main position in teaching and teachers' guiding role.[10] In the case discussion reasoning of the cases and critical thinking as the main evaluation mechanism should be encouraged so as to enhance the students' awareness and understanding of foreign legal system and foreign legal environment.

C. Actively excavating bilingual teaching faculty.

Faculties are the participants of implementing bilingual education. Their attitude, quality and ability greatly affect the result of bilingual teaching, even directly determine the success or failure of bilingual education.[11] At present bilingual teachers come from three resources: the majority are

professional instructors with English proficiency, part of whom have studied abroad. Another is English teachers with good English listening and speaking ability but without specialty. A very small part come from foreign teachers directly hired from abroad, who can teach the professional courses. But problems still exist in the three resources. The effective way of solving the shortage of teaching staff is to implement going-global strategy and bringing-in strategy. Chinese universities and institutes should integrate the teachers resources, encourage the professional teachers to have English training, and organize bilingual teachers to communicate, discuss and exchange their teaching methods and experience, at the same time assign some professional teachers to study abroad, improving their legal knowledge and English proficiency. The useful experience from Canada can be borrowed to shape Chinese bilingual teaching system, for example, specialized domestic and international bilingual education seminars can be organized regularly by education authorities at all levels, bilingual training courses can be organized by universities and various education institutions, and some foreign experts with professional qualifications can be hired from abroad directly.[11] The Ministry of Education, as the launcher of bilingual education, should arrange the bilingual teaching training course in the whole country, import, or invite or employ the prestigious experts or professors from abroad to give their ideology, teaching method and assessing method.

D. Attaching more importance on evaluation method.

The examinations should be flexible, emphasizing the students' participation in class, progress of their language expression, oral presentation, enthusiasm of case discussion, as well as understanding and grasping of professional knowledge. Communication between teachers and students inside and outside the classroom can form an effective environment of bilingual teaching. Four different evaluations, such as student self-evaluation, customer evaluation, student peer evaluation and teacher evaluation, should be considered.

V. CONCLUSION

It is known that bilingual legal teaching can help students to transform legal thinking and cultivate their ability to consider and analyze legal issues from a global perspective. [12] The teaching of franchising law is a legal education of combining theory and practice. The importance of bilingual legal education has gone beyond the significance of education itself in terms of theory and practice. The development of bilingual teaching needs not only the support from policy and law, but also the financial support from the government. With

China's entry into the intellectual economy, the bilingual education has been taken as an important education policy to revitalize China by means of education and science. [13] It should be realized that using English textbooks and teaching in English doesn't mean bilingual teaching and the bilingual teaching of franchising law is still in a primary stage. In order to achieve the goal of bilingual education, the Chinese government needs to establish a set of complete national scientific system of assessing bilingual education so as to ensure the orderly and healthy development.

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