

BAR EXAMINATIONS AND CRAM SCHOOLS IN GERMANY

HEINRICH AMADEUS WOLFF*

INTRODUCTION

This Article will provide a brief overview of bar examinations and preparation schools as they exist in Germany. The Article begins with a general outline of legal education in Germany, followed by a discussion of the relationship between examinations and legal education. It notes the structure of exams and legal education, and examines areas in which there is a lack of coordination. The Article then moves on to a discussion of cram schools. It concludes with a summary of the major points.

I. A GENERAL OUTLINE OF LEGAL EDUCATION IN GERMANY

The legal education program in Germany is composed of two parts. Each of these parts ends with an examination that is organized by the state, not by the university.¹ The German Federal Republic consists of sixteen states.² Each of these states has passed its own act on legal education (*Justizausbildungsgesetz*), and legal education is regulated by a federal statute, the *Richtergesetz* (statute of judges).³ However, it is possible to give a general survey of the content and organization of legal studies in these sixteen different legal spheres. The statute concerns not the legal professions in a general way, but only the profession of the judges.⁴ Persons entitled to become judges qualify for all

* Prof. Dr. Heinrich Amadeus Wolff, Professor of State and Administrative Law, Ludwig-Maximilians-Universität München, Institut für Politik und Öffentliches Recht.

¹ Deutsches Richtergesetz [DRiG] [Statute of Judges], Sept. 8, 1961, BGBl. I at 1665, § 5 abs. 1 (F.R.G.), *available at* Gesetz im Internet, <http://bundesrecht.juris.de>.

² JOERG M. MÖSSNER, REPORT ON LEGAL EDUCATION IN GERMANY (2000), <http://www.aals.org/2000international/english/germany.htm>.

³ *Id.*

⁴ DRiG § 5 Abs. 1.

other legal professions or, in other words, only such persons entitled to become judges can hold positions as lawyers, attorneys, higher civil servants, and other legal professions.⁵

In order to qualify as a judge, the statute requires: (a) the study of law at a university, (b) the so-called “first legal examination” (*Erste juristische Prüfung*), (c) a period of training lasting for two years (*Referendardienst* or *Vorbereitungsdienst*) with courts, lawyers and administrations, and (d) the “second legal state examination” (*Zweite juristische Staatsprüfung*).⁶ All persons that fulfill these four conditions are entitled to be called *Volljurist* (literally translated: a full-lawyer).⁷ At the same time, they are *Einheitsjuristen* (literally translated: “unitary lawyers”). This means that the legal education is the same for all professions.⁸

Legal studies last at least four years.⁹ The compulsory subjects are the “core” areas (*Kernbereich*) of civil law, criminal law, public law, and procedural law, including European Union law, legal methodology, and the philosophical, historical, and social bases of law.¹⁰ In addition, the students have to select subjects that they will study in greater depth for the elective part (*Schwerpunktbereich*).¹¹ There are no federal rules concerning the special subjects for students.¹² Instead, the subject selection is regulated by the law faculties.¹³

⁵ Johannes Riedel, *The Reform of Legal Education in Germany*, 0 EUR. J. OF LEGAL EDUC. 3, 3-10 (2001), <http://elfa.bham.ac.uk/site/ELFA/EJLE/issue0/Riedel.htm>.

⁶ DRiG §§ 5a, 5b.

⁷ See, e.g., VollJurist - JuraWiki.de, <http://www.jurawiki.de/VollJurist> (last visited May 30, 2006).

⁸ Peter Schlosser, *Anwaltsausbildung in Europa*, 41 NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 3003, 3003, 3005 (1999); Ingo v. Münch, *Flut und Ebbe in der Juristenausbildungsreform*, 39 NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 2576 (1997); Riedel, *supra* note 5; Mössner, *supra* note 2.

⁹ DRiG § 5a Abs. 1 S. 1.

¹⁰ *Id.* § 5a Abs. 2 S. 3.

¹¹ *Id.* § 5b Abs. 2 S. 4.

¹² *Id.*

¹³ See, for example, § 39 Bayerische Ausbildungs- und Prüfungsordnung für Juristen [BayJAPO] [Judge for the law studies from the federal state Bavaria], Apr. 16, 1993, GVBl Bayern at 335 (F.R.G.), available at <http://www.justiz.bayern.de/>

After the first examination, the students enter a two-year period of preparatory training (known as the period of instruction) before qualifying to take the second state examination.¹⁴ During this period, students work as temporary civil servants and get a small salary.¹⁵ They must serve in four mandatory areas (*Stationen*), for a minimum of three months each, and in one area of their choice for four to six months.¹⁶ The mandatory positions are with a civil court, a criminal court or prosecutor's office, an administrative body, and an attorney's office.¹⁷ The placement of the student's choice may be with a court or public body, a notary, a trade union, a business, or in another legal profession.¹⁸ During these two years of preparatory training, the students learn how to plead in court, draft acts and contracts, and write judgments.¹⁹ Additional details concerning German legal education are contained in the article by Professor Koriath.²⁰

II. STRUCTURAL ACCORDANCE BETWEEN EXAMINATIONS AND LEGAL EDUCATION

A. STRUCTURAL ACCORDANCE BETWEEN THE FIRST EXAMINATION AND THE SECOND STATE EXAMINATION

The first examination and the second state examination are, in my opinion, structured similarly. They are, however, not identical.²¹ The first state examination focuses on the situation of judges in a group preparing a decision.²² The student must, as a

ljpa/japo/Japo_1993_Bayern.pdf, and accessorially for the law faculties of the university of Munic, for example, Studien- und Prüfungsordnung der Ludwig-Maximilians-Universität München für den Studiengang Rechtswissenschaft mit dem Abschluss Erste Juristische Prüfung [Legislative Provisions for Studies and Examination in Munic], § 5 Abs. 2, available at http://www.jura.uni-muenchen.de/aktuell/StPrO_vom%2001.06.04.pdf [hereinafter Studien- und Prüfungsordnung].

¹⁴ MÖSSNER, *supra* note 2.

¹⁵ BayJAPO § 46 Abs. 2.

¹⁶ DRiG § 5b Abs. 4.

¹⁷ DRiG § 5b Abs. 2.

¹⁸ *Id.*

¹⁹ BayJAPO § 44.

²⁰ Stefan Koriath, *Legal Education in Germany Today*, 24 WIS. INT'L L.J. 85 (2006).

²¹ See BayJAPO § 16 on the one hand, and BayJAPO § 44, on the other.

²² BayJAPO § 16.

rule, write an *expertise*.²³ A very important point is that, in the examination, the student is required to discuss and solve a case by writing an *expertise* on the legal questions of the given case.²⁴ It is essential for German law students to acquire the capability of writing *expertises* during their studies at university. In the expert opinion the student has to write down all problems that the given case contains.²⁵

In contrast, the second state examination focuses on the decision taken.²⁶ The decision at which the judges have arrived must be justified.²⁷ In this phase, the student has to write down his decision in the form of a judgment.²⁸ The second examination repeats the first examination in substantial parts and covers similar subjects.²⁹ However, the following differences must be noted: the subject matter is even wider, it includes more procedural law, and the requirements are linked more strongly to the practical occupations.³⁰

B. THE CLOSE RELATIONSHIP BETWEEN LEGAL EDUCATION AND THE STATE EXAMINATIONS

There is a close relationship between legal education and examinations in Germany.³¹ Legal education thoroughly prepares

²³ ELISABETH HILLIGARDT & BARBARA LANGE, JURASTUDIUM ERFOLGREICH: PLANUNG, LERNSTRATEGIE, ZEITMANAGEMENT 65 (3rd ed. 2005); CHRISTOF GRAMM & HEINRICH AMADEUS WOLFF, JURA - ERFOLGREICH STUDIEREN: FÜR SCHÜLER UND STUDENTEN 145 (4th ed. 2005). An *expertise* can be defined as an analysis or an opinion from one judge for other judges in the same chamber of the court; however, it does not act as a judgment. Instead, the *expertise* prepares the judgment.

²⁴ Compare with MÖSSNER, *supra* note 2.

²⁵ HILLIGARDT & LANGE, *supra* note 23; GRAMM & WOLFF, *supra* note 23.

²⁶ BayJAPO § 44 in connection with BayJAPO § 57.

²⁷ HILLIGARDT & LANGE, *supra* note 23, at 226; GRAMM & WOLFF, *supra* note 23, at 146.

²⁸ HILLIGARDT & LANGE, *supra* note 23, at 226; GRAMM & WOLFF, *supra* note 23, at 146.

²⁹ Ulrich Goll, *Praxisintegrierte Juristenausbildung als Chance*, 33 ZEITSCHRIFT FÜR RECHTSPOLITIK [ZRP] 38, 43 (2000).

³⁰ DRiG § 5d Abs. 3.

³¹ Walter Stiebeler, *Die Rückkoppelungen zwischen Prüfung und Ausbildung, in PROBLEME DER JURISTENAUSBILDUNG: VORTÄGE DES 11. SONDERSEMINARS 1978 DER HOCHSCHULE FÜR VERWALTUNGSWISSENSCHAFTEN SPEYER* 57, 61 (Detlef Merten ed., 1980).

the students for the examinations. This is, in my opinion, true in regard to the entire range of subject matter covered by the examinations. It also applies in regard to methods in thinking and arguing. It is, therefore, likely that legal education would be different in Germany if the examinations were different.

C. THE COMMON STRUCTURE OF EXAMINATIONS AND LEGAL EDUCATION

1. *Practical Orientation*

The legal education and the examinations are closely linked to legal practice in Germany.³² Case material used in the examinations is often based on important judicial rulings.³³ Consequently, practicing lawyers function as examiners in both examinations.³⁴ Additionally, the student has to participate in a practical course of a few months during his legal studies.³⁵ Other practical elements are also contained in legal studies, including the art of interrogation, mediation, and rhetoric.³⁶ The two-year period of preparatory training is completely oriented toward practical work.³⁷ The tasks set in the two examinations are often cases based on concrete questions that have arisen in complex situations, sometimes based on real events.³⁸ The involved persons argue about their respective claims.³⁹

2. *Reference to the Text of the Acts of Parliaments*

German legal education is strongly related to the text of laws and statutes. Students work, as far as my experience goes,

³² Compare Philip Leith, *Legal Education in Germany: Becoming a Lawyer, Judge, and Professor*, 4 WEB J. CURRENT LEGAL ISSUES (1995), available at <http://webjcli.ncl.ac.uk/articles4/leith4.html> with Dieter Schmidt, *Die Bedeutung der Prüfungsbestimmungen*, in PROBLEME DER JURISTENAUSBILDUNG: VORTÄGE DES 11. SONDERSEMINARS 1978 DER HOCHSCHULE FÜR VERWALTUNGSWISSENSCHAFTEN SPEYER, *supra* note 31, at 79, 88.

³³ GRAMM & WOLFF, *supra* note 23, at 150.

³⁴ See BayJAPO § 60.

³⁵ DRiG § 5a Abs. 3 S. 2.

³⁶ DRiG § 5a Abs. 3 S. 1.

³⁷ DRiG § 5b Abs. 1.

³⁸ Leith, *supra* note 32; MÖSSNER, *supra* note 2.

³⁹ Leith, *supra* note 32; MÖSSNER, *supra* note 2.

with the texts from the beginning of their studies. Students are allowed to bring the full text of all relevant acts of parliament to the examinations.⁴⁰ The students' arguments are based on the text of the statutes in the oral examination, too.⁴¹ It has been my experience that sometimes they even read the acts of parliaments aloud in the oral examination. Afterwards, they are asked to base their arguments on the text by interpreting it and applying it to the given case. The lectures and courses at university are also based on the system of important statutes.⁴²

3. *Relation to Jurisdiction*

Legal education and the examinations are also strongly related to jurisdiction and case law.⁴³ The dominant perspective of legal education is the view of the judge. The test cases orient themselves strongly on original cases from the jurisdiction.⁴⁴ If the courts decide a legal issue unanimously, the decision will often be treated as though legislators had decided this question by statute.⁴⁵

The focus on the activity of the judge has a material reason, based on the function of the law. The lawyer has to interpret the statutes and to apply the rules.⁴⁶ He does not have to legislate or to create the statutes,⁴⁷ and he must not circumvent them.⁴⁸ Furthermore, the lawyer must be able to apply the statutes if the rule

⁴⁰ Compare BayJAPO § 28 Abs. 3 S. 2 with die Hilfsmittelbekannmachung des Bayerischen Justizministeriums: http://www.justiz.bayern.de/ljpa/Hilfsmittelbekanntmachung_I_Anmerkungen_abEJ2004_2.pdf.

⁴¹ BayJAPO § 32 Abs. 4.

⁴² DRiG § 5a Abs. 2; see for the law faculties of the University of Munich only den Studienplan (degree course scheme) as annex to the Studien- und Prüfungsordnung, *supra* note 13.

⁴³ Stiebeler, *supra* note 31.

⁴⁴ Compare with GRAMM & WOLFF, *supra* note 23, at 150.

⁴⁵ Degenhart, in MICHAEL SACHS, GRUNDGESETZ: KOMMENTAR art. 70, rn. 21 (3rd ed. 2003).

⁴⁶ ROLF WANK, DIE AUSLEGUNG VON GESETZEN: EINE EINFÜHRUNG 41 (3rd ed. 2005).

⁴⁷ Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law] Jan. 1, 1964, art. 20 abs. 3, available at Gesetz im Internet, <http://bundesrecht.juris.de>; GRAMM & WOLFF, *supra* note 23, at 9.

⁴⁸ Strafgesetzbuch [StGB] [Penal Code] Jan. 1, 1975, § 339, available at Gesetz im Internet, <http://bundesrecht.juris.de>.

is not clear and if the statutes are not immediately understandable.⁴⁹ This is exactly the task of the judge. Therefore, the judge's role is the standard or example for legal education. The interpretation and the application of the statutes are the basis of all legal professions. All legal professions require this ability. However, the solicitor must be able to do even more. He must be able to formulate contracts, to negotiate, to persuade someone of something.⁵⁰ These are all further skills which are added to the basic task of legal professions.⁵¹ This is important, since most lawyers who pass the examination become solicitors and only a few become judges.⁵²

4. Case Orientation

The examinations and legal education are primarily case-oriented.⁵³ Merely theoretical tests are very rare.⁵⁴ The legal education and examinations are based on exercises concerning cases. The application of the statutes is practiced by discussing cases that cannot be solved simply by reading the text of the statutes.⁵⁵ We call them "pathological cases."⁵⁶ Exercising legal abilities with exceptional and borderline cases makes sense. The student should not learn the details by heart; rather, he has to learn to apply general principles to special and difficult cases. Exceptional cases are used to examine all aspects of the legal system.⁵⁷ Furthermore, the lawyer learns, from the beginning, an important thing: a rule is good if it brings good results, even in a constellation not considered when the rule was made.

⁴⁹ Compare with WANK, *supra* note 46.

⁵⁰ Compare with WANK, *supra* note 46.

⁵¹ Hermann Büttner, *Generalist oder Spezialist- die Tätigkeitsbereiche des Rechtsanwalts*, in *DIE JURISTENAUSBILDUNG AUS DER SICHT DER PRAXIS* 51, 57 (Wolfgang Blomeyer ed., 1994).

⁵² Riedel, *supra* note 5.

⁵³ HILLIGARDT & LANGE, *supra* note 23; GRAMM & WOLFF, *supra* note 23.

⁵⁴ *Id.*

⁵⁵ Hildegund Holzheid, *Im Leitbild der Einheit der Rechtsordnung- Volluristen im Diensts der Justiz*, in *DIE JURISTENAUSBILDUNG AUS DER SICHT DER PRAXIS*, *supra* note 51, at 21, 25.

⁵⁶ GRAMM & WOLFF, *supra* note 23, at 172.

⁵⁷ *Id.*

5. *Special Emphasis on Legal Knowledge and Legal Abilities*

The examinations and legal education are designed to train students in the methods of interpretation and other aspects of legal thinking and arguing.⁵⁸ Students must be able to apply these abilities to a substantial part of the legal system.⁵⁹ The subject matter is thematically broad, covering private law, public law, and criminal law.⁶⁰

6. *Independence and Objectivity*

The aim of both legal education and the examination is to teach the student to think independently and objectively.⁶¹ The lawyer must be independent. He must decide the controversy between several persons independently.⁶² He has to justify his decision. His independence may not be understood as arbitrariness.⁶³ Legal studies should not habituate students to potential future power as legal professionals; they should instead learn that they are simply individuals who must justify their decisions in future. They must justify their decisions in such a way that they can believe that the decision is correct and that any other lawyer who also thinks independently would have come to the same result.⁶⁴ Legal education and the legal examination are very objective in Germany, because of the close orientation to the statutes, to the jurisdiction, and to the cases.⁶⁵ The student receives, in my opinion, comparable instruction at each law faculty in Germany. Because of the objectivity, anyone who is a good lawyer can examine and decide if the student solved the test case properly, and, therefore, has the ability to judge whether the legal education has been successful.

⁵⁸ BayJAPO § 16.

⁵⁹ Eva Ines Obergfell, *Der Gang zum Repetitor - Umweg oder Abkürzung auf dem Weg zum Examen?*, 41 JURISTISCHE SCHULUNG [JuS] 622, 622-23 (2001).

⁶⁰ DRiG § 5 Abs. 2; BayJAPO § 18.

⁶¹ BayJAPO § 16.

⁶² *Id.*

⁶³ Compare with MÖSSNER, *supra* note 2.

⁶⁴ Compare with WANK, *supra* note 46.

⁶⁵ Compare with WANK, *supra* note 46.

D. AREAS THAT LACK COORDINATION

Legal education is not examination-oriented in every aspect, however. The following points should be mentioned.

1. *Legal Studies at the University*

The structure of the legal studies differs a little bit from what is required in the first legal examination.⁶⁶ In particular, university education is more academically oriented than the examinations require.⁶⁷ Originality, critical thinking, and background knowledge are more important at university than in the examination. Legal reasoning and a methodically convincing way of addressing legal issues is more important in academic teaching than in the examinations. In contrast, in the examination, the individual concrete case is more important than during legal education.⁶⁸ Furthermore, university teaching may vary considerably depending on the individual professor's personality. Teaching is closely linked to academic work and research.⁶⁹ While the individual professor cannot really determine the topic of his lecture, he can influence the point of view from which the problems are presented. His teaching orients itself less on the jurisdiction than the examination. The student is usually examined by someone who did not give the lecture in the relevant subject,⁷⁰ because the persons who teach at university and the persons who set the first examination are not necessarily identical.⁷¹ The student, therefore, cannot be sure of what the examiners expect. Overall, instruction at university is wider and broader than the subject material covered in the examination.⁷² It is particularly the state

⁶⁶ Compare the Studienplan, *supra* note 42 with DRiG § 5a Abs. 3.

⁶⁷ Hans Kudlich, *Examensvorbereitung an der Universität und beim Repetitor: Fakten, Vorurteile und Perspektiven*, 42 JURISTISCHE SCHULUNG [JuS] 413, 414-15 (2002); STEFAN LUEG, DIE ENTSTEHUNG UND ENTWICKLUNG DES JURISTISCHEN PRIVATUNTERRICHTS IN DEN REPETITORIEN 10 (1994).

⁶⁸ See DRiG §§ 5a Abs. 2, Abs. 3 and Abs. 4 on the one hand, and on the other hand § 5 d.

⁶⁹ GG art. 5 Abs. 3.

⁷⁰ Compare with BayJAPO § 21.

⁷¹ LUEG, *supra* note 67, at 10.

⁷² See DRiG §§ 5a Abs. 2, Abs. 3 and Abs. 4 on the one hand, and on the other hand § 5 d.

examination which attaches great importance to the correct result of a case.⁷³

2. *The Two-Year Legal Preparatory Training* (“Vorbereitungsdienst”)

The jurisdiction determines the content of instruction during the two-year legal preparatory training period.⁷⁴ There are, therefore, no structural deviations between instruction and the examination. In this period of training, each student is instructed by four or five practicing lawyers.⁷⁵ However, as far as my experience goes, there is no connection between the persons who instruct and those who examine

The practical topics covered by the student during the preparatory training are frequently not part of the material in the second examination.⁷⁶ The student may deal with a difficult problem for a few weeks during the training which will not be part of the subject matter in the second examination.⁷⁷ The function of the preparatory training’s practical part is to gain practical experience, not necessarily to prepare for the examination, whereas the accompanying instruction is completely aligned to the second examination.⁷⁸

III. REPETITORIEN: CRAM SCHOOL

A. ORGANIZATION

Private courses preparing the students for the examinations, the so-called *Repetitorien*, play an important role in Germany.⁷⁹ The *Repetitorien* are cram schools.⁸⁰ They offer private revision classes that drill students in the required knowledge and methodology outside of the formal system.⁸¹ Participation in the cram

⁷³ *Id.*

⁷⁴ See BayJAPO § 44.

⁷⁵ See DRiG § 5b Abs.4.

⁷⁶ BayJAPO § 44 S. 1.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Obergfell, *supra* note 59, at 622; LUEG, *supra* note 67, at 10.

⁸⁰ See Obergfell, *supra* note 59, at 622; LUEG, *supra* note 67, at 10.

⁸¹ See Obergfell, *supra* note 59, at 622; LUEG, *supra* note 67, at 10.

schools is voluntary.⁸² Students pay for the cram schools themselves.⁸³

These cram schools have a long tradition. The cram schools developed at the law faculty in Bologna, Italy in the thirteenth and fourteenth centuries.⁸⁴ From there it was introduced into the German instruction system, particularly into legal education.⁸⁵ The cram schools exist, as far as my experience goes, in many different faculties, in particular those of medicine, theology, and languages. However, they play a particularly important role in the legal education.

The cram schools offer a variety of services,⁸⁶ including courses for examination preparation in the core subjects, in the subsidiary subjects, and in the special parts of legal studies. They also offer courses consisting of written examinations, papers, and courses geared to particular university tests.⁸⁷ The courses vary in length.⁸⁸ Some last for about two to three hours once a week, while others take place for up to four hours about five times a week.⁸⁹ The duration of the course can be up to one and a half years.⁹⁰ Additionally, cram schools offer one-weekend courses on special subjects.⁹¹

Teachers working in the cram schools are, as far as my experience goes, fully qualified lawyers, usually working as practicing

⁸² See Obergfell, *supra* note 59, at 622; LUEG, *supra* note 67, at 10.

⁸³ See Obergfell, *supra* note 59, at 622; LUEG, *supra* note 67, at 10.

⁸⁴ LUEG, *supra* note 67, at 12.

⁸⁵ *Id.*

⁸⁶ There are several large organizations, for example, Hemmer Repetitorium, <http://www.hemmer.de/repetitorium>; Alpmann und Schmidt, <http://www.alpmann-schmidt.de>; Jura intensive, <http://www.jura-intensiv.de>; Repetitorim Lamadé, <http://www.lamade.de/repetitorium/index.html>; Abels and Langels, <http://www.al-online.de>. Local Repetitorium are, for example, Kern-Repetitorium (Munic), <http://www.kern-repetitorium.de>; Hause-Wehowsky, <http://www.hauser-wehowsky.de/index.htm>; Plitt-Repetitorium (Nürnberg-Erlangen), <http://www.plitt.net>.

⁸⁷ See authorities cited, *supra* note 86.

⁸⁸ See authorities cited, *supra* note 86.

⁸⁹ See authorities cited, *supra* note 86.

⁹⁰ See authorities cited, *supra* note 86.

⁹¹ See authorities cited, *supra* note 86.

attorneys. Some of them are very young and others are very experienced. Many of them have close connections to the university. Their payment for instruction varies significantly.

The cram schools are often large organizations, which work in the whole of Germany.⁹² In addition, there are regional cram schools that only offer courses in one town.⁹³ Some courses may cater to as many as one hundred participants; other courses are offered for only eight participants. The costs vary considerably,⁹⁴ depending on the course size and range.⁹⁵ The costs can vary from fifty to three hundred euros a month.⁹⁶ The correction of a written test costs between five and eight Euros.⁹⁷ Typically, a student pays a total of approximately six hundred to three thousand euros for the cram schools over the course of his studies.⁹⁸

B. THE IMPORTANCE OF THE CRAM SCHOOLS

The acceptance level for applicants to the cram schools is very high.⁹⁹ About 90 percent of all law students attend at least some courses at a cram school to prepare for the first examination.¹⁰⁰ The cram schools preparing students for the first examination are, however, more important than the cram schools preparing students for the second state examination,¹⁰¹ though no one can say exactly how great the difference is. There are no exact statistics about participation in the cram schools.¹⁰² As far as my experience goes, many students believe they learn how to apply the law only in the cram schools. The participation in courses, however, as far as my experience goes varies greatly.

⁹² See authorities cited, *supra* note 86.

⁹³ WOLFGANG MARTIN, JURISTISCHE REPETITORIEN UND STAATLICHES AUSBILDUNGSMONOPOL IN DER BUNDESREPUBLIK DEUTSCHLAND 94 (1993).

⁹⁴ See authorities cited, *supra* note 86.

⁹⁵ HILLIGARDT & LANGE, *supra* note 23, at 97; authorities cited, *supra* note 86.

⁹⁶ See HILLIGARDT & LANGE, *supra* note 23, at 97; authorities cited, *supra* note 86.

⁹⁷ See HILLIGARDT & LANGE, *supra* note 23, at 97; authorities cited, *supra* note 86.

⁹⁸ See HILLIGARDT & LANGE, *supra* note 23, at 97; authorities cited, *supra* note 86.

⁹⁹ ACHIM BERGE ET AL., EXAMEN OHNE REPETITOR 20 (1988); LUEG, *supra* note 67, at 9.

¹⁰⁰ BERGE ET ET AL., *supra* note 99, at 20.

¹⁰¹ *Id.*; LUEG, *supra* note 67, at 9;

¹⁰² MARTIN, *supra* note 93, at 93.

Some students go to the cram schools at the beginning of their studies, but most students attend the cram schools only at the end. Some of the students participate in the whole program, while others attend only a part of the program. It should be made clear, however, that the courses at the cram schools are really only an addition to the lectures at university. The students spend, in my opinion, most of their time at university and not at the cram schools.

C. THE REASONS FOR THE IMPORTANCE OF THE CRAM SCHOOLS

The great importance of cram schools is basically linked to the structure of the examination and of the legal education.¹⁰³ A general aspect is that there is a certain lack of coordination between legal education program and the examinations.¹⁰⁴ The other main reasons for the immense acceptance of the cram schools are the following:

1. *Liberty and Independence in the Organization of University Studies*

There are only a few obligations for students studying law. The system is based on the assumption that the students are morally fully developed humans who desire a good legal education and are mentally able to work without obligation. They have to prove their independence from the start by organizing their own studies.¹⁰⁵

The participation in the cram schools is voluntary, in contrast to the participation in the formal legal education and preparatory training program.¹⁰⁶ Even so, during and before the examination, more students can attend the cram schools than the

¹⁰³ Goll, *supra* note 29, at 38; LUEG, *supra* note 67, at 10, 109; WINFRIED HASSEMER & FRIEDRICH KÜBLER, WELCHE MAßNAHMEN EMPFEHLEN SICH - AUCH IM HINBLICK AUF DEN WETTBEWERB ZWISCHEN JURISTEN AUS DEN EG-STAAATEN - ZUR VERKÜRZUNG UND STRAFUNG DER JURISTENAUSBILDUNG? 28 (1990).

¹⁰⁴ Goll, *supra* note 29, at 38; LUEG, *supra* note 67, 10, 109; HASSEMER & KÜBLER, *supra* note 103, at 28.

¹⁰⁵ GRAMM & WOLFF, *supra* note 23, at 92.

¹⁰⁶ DRiG § 5a.

lectures at the university.¹⁰⁷ This is because the obligation to attend the lectures is, in reality, only a theoretical obligation; usually no one monitors student attendance at lectures.¹⁰⁸ Often the professor does not know the names of the students attending his lectures. The students only have to pass a few tests during their studies.¹⁰⁹ They must pass these tests in order to qualify to take the first (state) examination,¹¹⁰ but other than that, the results of these tests do not have any influence on the mark of the state examination.¹¹¹ An exception is made for the special subjects.¹¹²

In my personal experience, the number of university students attending a particular course or lecture decreases greatly over the course of the term. In Munich, good and important lectures in the middle of the law studies start with approximately four hundred and fifty participants and end with one hundred and fifty participants. In contrast to the studies at university, however, there is a stricter obligation to be present during preparatory training.¹¹³ As far as my experience goes, attendance is, in principle, controlled by the person in charge of the practical or theoretical training.

In my opinion, the students who pay for, but do not participate in, one of the cram schools have to justify any absences. They receive the money for the cram schools from other persons such as friends and relatives (usually their parents). They have to justify their lack of attendance at cram schools to these persons; in contrast, they need not justify their absence from university lectures.

Cram schools, however, treat students more like children.¹¹⁴ The cram schools decide what the participants have to learn and which questions are necessary.¹¹⁵ Weaker students, in particular,

¹⁰⁷ BERGE ET AL., *supra* note 99, at 20; LUEG, *supra* note 67, at 9.

¹⁰⁸ GRAMM & WOLFF, *supra* note 23, at 92.

¹⁰⁹ Leith, *supra* note 32.

¹¹⁰ BayJAPO § 24.

¹¹¹ *Id.*

¹¹² BayJAPO § 38.

¹¹³ *Id.* § 46.

¹¹⁴ HASSEMER & KÜBLER, *supra* note 103, at 28.

¹¹⁵ *Id.*

appreciate this sort of guidance and reassurance.¹¹⁶ Moreover, the cram schools provide courses for the students, but do not give examinations.¹¹⁷ In the view of the students, they are therefore on their side, like friends.¹¹⁸ They are appreciated as if they were companions, as compared to the professors and examiners. This is an important advantage.¹¹⁹ The teacher of the courses at the cram school often gives some advice concerning contact with a certain professor. At university, in contrast, students are treated as adults. Many good students, who appreciate the liberty of the university, as far as my experience goes, do not attend the cram schools, therefore. It appears that, generally, about half of the students who pass the first examination with good results do not attend the cram schools.

2. Consistent Organization

The cram schools guarantee that knowledge is imparted in a consistent and well structured way.¹²⁰ This begins with the organization of the courses. At university, the professors determine the schedules of the courses themselves. There are often overlaps or interruptions between the different courses, whereas at the cram schools, the courses are well-coordinated.¹²¹

This uniformity also applies to the content of instruction. The cram schools teach all mandatory issues from a single point of view.¹²² Their basic aim is the solution of the cases.¹²³ The scope of their training is more limited, though, as they will usually focus on case law rather than academic discussion.¹²⁴ Matters of academic dispute are taught in a simplified manner, making them manageable for students under the time pressure of the state examinations. The cram schools teach neither the academic aspects of law nor the areas that, though part of the course at

¹¹⁶ HILLIGARDT & LANGE, *supra* note 23, at 98.

¹¹⁷ Obergfell, *supra* note 59, at 622; LUEG, *supra* note 67, at 10.

¹¹⁸ HASSEMER & KÜBLER, *supra* note 103, at 28.

¹¹⁹ LUEG, *supra* note 67, at 10.

¹²⁰ Obergfell, *supra* note 59, at 622; LUEG, *supra* note 67, at 10.

¹²¹ HILLIGARDT & LANGE, *supra* note 23, at 98.

¹²² LUEG, *supra* note 67, at 11.

¹²³ MARTIN, *supra* note 93, at 102.

¹²⁴ LUEG, *supra* note 67, at 10.

university, are rarely examined.¹²⁵ The cram schools thus reduce the scope of the subject matter to be covered.¹²⁶

As far as my experience goes, university professors frequently impart their own opinions. In consequence, contradictions can sometimes arise between what professors say about the same subject matter. This can cause difficulty, in that an opinion appreciated by a professor at university may be unacceptable to an examiner in the first examination.

3. *Further Services Offered by the Cram Schools*

Cram schools are organized professionally and can offer a wide variety of services, including, for example, written tests, summaries, text books, and so on.¹²⁷ University law professors, who usually work alone, cannot offer comparable services. As far as university education is concerned, teamwork between professors within a law faculty is, in my opinion, not very common in Germany.

4. *Law as a Massenstudium, an Overcrowded Subject*¹²⁸

The number of law students is immense.¹²⁹ There are only few restrictions for beginning law studies and, in principle, anyone who holds a high school diploma (*Abitur*) can study law.¹³⁰ Law could be called a “subject for the masses.” In Germany, it is important that the conditions for admission to legal studies remain simple. Therefore, many people who are unsure of their future profession will choose legal studies.¹³¹ People who are unable to study the subject of their choice because they did not

¹²⁵ *Id.*

¹²⁶ HILLIGARDT & LANGE, *supra* note 23, at 98; HASSEMER & KÜBLER, *supra* note 103, at 28.

¹²⁷ HILLIGARDT & LANGE, *supra* note 23, at 98; Leith, *supra* note 32; MARTIN, *supra* note 93, at 104.

¹²⁸ Compare Leith, *supra* note 32, with HILLIGARDT & LANGE, *supra* note 23, at 98.

¹²⁹ Ludwig-Maximilians-Universität München, Zahlen und Fakten, <http://www.lmu.de/conman/index.cfm?path=707>, or BERICHT DES BAYERISCHEN LANDEJUSTIZ-PRÜFUNGSAMTES FÜR DAS JAHR 2004, http://www.justiz.bayern.de/ljpa/Jahresbericht_2004.pdf

¹³⁰ GRAMM & WOLFF, *supra* note 23, at 56.

¹³¹ *Id.* at 13.

meet the requirements will often choose law studies, too.¹³² Law studies, therefore, attracts people who want to study and obtain an academic title.¹³³

In the view of the state, this is useful. A place in the law faculty does not cost the state much money, on the one hand, and on the other hand, lawyers can work in many different professions.¹³⁴ Nevertheless, the large number of students, including those who did not originally choose law, causes its own difficulties.¹³⁵ As far as my experience goes, the lectures are sometimes very full, thus limiting the professor-student interaction. In this way, coaching is not individual, as it is for subjects studied by fewer students and with small courses.¹³⁶

5. *The Fear of the Examination*¹³⁷

The examinations are very difficult. A lot of students fail the examinations.¹³⁸ The number of candidates who fail is about 30 percent.¹³⁹ In consequence, some of the students have to look for another profession after eight years of unsuccessful education.¹⁴⁰ The subject matter is tested in a series of written exams.¹⁴¹ The students' knowledge must be broad at the time of the first examination. There are not many tests before the first examination;¹⁴² the students have the opportunity to take some tests in

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Josef Heptner, *Die Zukunftsaussichten der Juristen auf dem Arbeitsmarkt, in PROBLEME DER JURISTENAUSBILDUNG: VORTÄGE DES 11. SONDERSEMINARS 1978 DER HOCHSCHULE FÜR VERWALTUNGSWISSENSCHAFTEN SPEYER*, *supra* note 31, at 39, 41.

¹³⁵ LUEG, *supra* note 67, at 126; NICOLAS LÜHRIG, *DIE DISKUSSION ÜBER DIE REFORM DER JURISTENAUSBILDUNG VON 1945 BIS 1995*, at 230 (1997).

¹³⁶ Leith, *supra* note 32.

¹³⁷ *Id.*

¹³⁸ Bayerischen Staatsministerium der Justiz, Landesjustizprüfungsamt, Bericht des Bayerischen Landesjustizprüfungsamtes für das Jahr 2004, http://www.justiz.bayern.de/ljpa/Jahresbericht_2004.pdf

¹³⁹ *Id.*

¹⁴⁰ Compare with Hermann Stephan, Keine Ende der teuren Misere, 56 NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 2800 (2003).

¹⁴¹ BayJAPO § 28.

¹⁴² Leith, *supra* note 32.

advance only in the special subjects.¹⁴³ This point is important, since an *Einheitsjurist* is, in my opinion, only someone who has an overview (survey or conspectus). In this way, an *Einheitsjurist* cannot develop, if the students pass an examination in special subjects in one year and six months later in another special subject.

Most candidates are rather anxious when the examination approaches after four or five years of university education. Some even suffer psychological collapses.¹⁴⁴ It is generally understood in the legal community that other candidates take drugs to calm down, and some of them even take the same narcotics as those given to animals before they are slaughtered. This fear of the examinations is certainly reduced by participation at the cram schools.¹⁴⁵ The high acceptance of the cram schools also lies in the fact that students are afraid of omitting some subjects that other students have prepared for the examination.¹⁴⁶ Furthermore, the cram schools offer comprehensive review of the subjects in a short time before the examination, which universities are unable to offer.¹⁴⁷

D. THE INFLUENCE OF THE CRAM SCHOOLS ON THE LAW FACULTIES AT THE UNIVERSITY

The existence of the cram schools influences the law faculties. In my opinion, law faculties have been under considerable pressure to justify their work over the last few decades. The increasing dissatisfaction of the students, who compare the training offered by law faculties to that of the cram schools, has led to substantial changes in university education in recent years.¹⁴⁸ For some years now, nearly all law faculties have been offering more

¹⁴³ BayJAPO § 38.

¹⁴⁴ LUEG, *supra* note 67, at 119.

¹⁴⁵ Kudlich, *supra* note 67, at 415; Obergfell, *supra* note 59, at 622, 623.

¹⁴⁶ HILLIGARDT & LANGE, *supra* note 23, at 86.

¹⁴⁷ Obergfell, *supra* note 59, at 622, 623; MARTIN, *supra* note 93, at 104.

¹⁴⁸ HILLIGARDT & LANGE, *supra* note 23, at 86.

courses, especially in preparation for the first examination.¹⁴⁹ Almost all law faculties now offer more tutorials designed to prepare the students for the state examination.¹⁵⁰ The law faculties offer review lectures, even during the term holidays.¹⁵¹ The professors hand out more supporting material, as well as the solution of written exercises.¹⁵² Nevertheless, the problems mentioned still exist, though they are less acute.

Meanwhile, the law faculties have to be wary of the cram schools. The professors have to take care of their supporting documents, especially the documents that are presented on the internet.¹⁵³ As far as my experience goes, these are often used by unauthorized persons. Solutions of cases have to be secured with passwords.¹⁵⁴ The professors also take care to select new topics for each oral examination, because, as far as my experience goes, the cram schools collect the minutes of the oral examinations and sell them to the candidates who take the oral examination with the same examiner.¹⁵⁵ The topics for written and oral presentations are selected in such a way as to be as individual as possible, especially because the cram schools have central databases collecting good presentations.¹⁵⁶

E. REACTIONS OF THE LAW FACULTIES

In my experience, the law faculties are annoyed by the cram schools and try to fight against them in different ways. The individual professors also react in different ways. As far as my experience goes, some of them ignore the importance of the cram

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *E.g.*, Ludwig-Maximilians-Universität München, Juristische Fakultät München, <http://www.jura.uni-muenchen.de/studium/lernen/docucip/index.htm> (last visited May 30, 2006); Saarheimer Fälle zum Staats- und Verwaltungsrecht, <http://www.jura.uni-sb.de/FB/LS/Grupp/klausur.htm> (last visited May 30, 2006).

¹⁵³ See authorities cited, *supra* note 152.

¹⁵⁴ See authorities cited, *supra* note 152.

¹⁵⁵ See FSI Jura – LMU München, <http://www.fachschaft.jura.uni-muenchen.de/examen/protokoll.htm> (last visited May 30, 2006).

¹⁵⁶ *E.g.*, Hausarbeiten.de: rechtswissenschaft, <http://www.hausarbeiten.de/suchmaschine?op=1&searchstring=rechtswissenschaft> (last visited May 30, 2006); Wissen24 – Jura (Rechtswissenschaften), http://www.wissen24.de/faecher/jus_0.html (last visited May 30, 2006).

schools; some do not appreciate the students who attend the cram schools; some try to copy the structure of the cram schools' teaching; and some think that the cram schools are a meaningful addition to university studies. Most of them try in this way to justify why they are not personally responsible for student attendance of cram schools

F. POSSIBLE SOLUTIONS

While many would like to reduce the importance of cram schools, not all possible remedies are currently being explored, because some would entail great disadvantages.¹⁵⁷ Several options exist. For example, the presence of the students at lectures could be made obligatory. This would, however, curtail the students' academic freedom.

The financial element could also be adjusted. Today, attending universities is free. The financial situation of the law faculties could be improved with the introduction of fees, which would allow the universities to improve the professor-student ratio.¹⁵⁸ They also could increase the services offered to the students. At the same time, the emotional relationship of the students to their university would increase. Nevertheless, the introduction of fees would be a disadvantage for the students. However, the parliament is currently changing the law, so it will surely be possible to introduce student fees in future.¹⁵⁹

There could also be a stricter selection of students before studies begin. The introduction of selection criteria for legal education could reduce the meaning of the examinations as selection mechanisms. Many European countries are taking this path.¹⁶⁰ This is, in my personal view, a possible option, but its realization is a political question. This change would be combined with a reduction of the freedom of the students to study the subject of

¹⁵⁷ Holzheid, *supra* note 55, at 22.

¹⁵⁸ Hochschulrahmengesetz [HRG], Jan. 26, 1976, BGBl. I at 185, § 37 Abs. 4 S. 2 (F.R.G.), available at Gesetz im Internet, <http://bundesrecht.juris.de>; DAAD – Studiengebühren in Deutschland, http://www.daad.de/deutschland/studium/studienplanung/00493.de.html#headline_0_1 (last visited May 30, 2006).

¹⁵⁹ *Id.*

¹⁶⁰ Schlosser, *supra* note 8, at 3005.

their choice, and it would reduce the number of students studying law out of lack of direction.¹⁶¹

Instruction at university could be more strongly centralized and standardized, but this alteration would interfere with the professors' freedom of teaching. Furthermore, the range of examiners could be limited to persons who also teach.¹⁶² This is my personal favorite solution, but this change would require additional work from the professors and is therefore not popular.¹⁶³

Instruction could be more tailored to the examination. This change would, however, eliminate the few remaining academic elements of the lectures and seminars at university. The opposite solution could also be employed: the examinations could be changed. The statewide uniformity of the examinations could be eliminated, and the law faculties could be made completely responsible for the examinations.¹⁶⁴ This change would, though, entail a substantial loss of quality of the examination.

In my opinion, the reform of legal education in 2002 employed some of these solutions. One of its aims was to reduce the acceptance of the cram schools.¹⁶⁵ As a result, students were forced to attend more courses at university, for several reasons: (1) The examinations in the special subjects are completely organized by the university.¹⁶⁶ (2) The contents of the examinations differ from one law faculty to another.¹⁶⁷ Therefore, the cram schools that work on a national basis no longer profit from the advantage of professional work-sharing. (3) The examinations are more academic than the written tests in the state examination, so the student usually has to write seminar papers.¹⁶⁸ (4) The examinations in the special subjects can only be set by professors or persons who teach at the law faculties.¹⁶⁹

¹⁶¹ Goll, *supra* note 29, at 38, 43.

¹⁶² LUEG, *supra* note 67, at 112; MARTIN, *supra* note 93, at 232.

¹⁶³ Stiebeler, *supra* note 31, at 59.

¹⁶⁴ LUEG, *supra* note 67, at 113; MARTIN, *supra* note 93, at 234.

¹⁶⁵ Compare with MÖSSNER, *supra* note 2.

¹⁶⁶ BayJAPO § 38.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

IV. CONCLUSION

Germany will have to live with the cram schools in the future.¹⁷⁰ The importance of the cram schools could only be reduced if the structure of the examinations was changed, the free admission to legal studies was removed, or the freedom of the professors was curtailed even more than it already has been. In my personal opinion, the cram schools are not a great evil. They are a voluntary addition to the state legal education. This is not unreasonable, as long as there is a balance between the attendance at the cram schools and the university. The disadvantages arising from further changes in university legal education or the state examinations are greater than the problems with the acceptance of the cram schools; indeed, the reforms of legal education undertaken in 2002 will eventually lead to a loss of quality of the examination. Cram schools are a continuous stimulus for the law faculties, motivating them to improve their lectures and tutorials in order to make cram schools less attractive for students.¹⁷¹ The existence of the cram schools reminds the university instructors that they must not forget the students' concerns about the examinations.

¹⁷⁰ HASSEMER & KÜBLER, *supra* note 103, at 28.

¹⁷¹ Kudlich, *supra* note 67, at 417.