

**Panel on Administration of Justice and Legal Services  
Meeting on 16 December 2013**

**Submissions of the Law Society of Hong Kong on the Common Entrance Examination**

1. The entrants to the solicitors' profession presently comprise the following:
  - (i) Graduates of Bachelor of Laws ("LLB") degree of 4 years, double law degree of 5 years and Juris Doctor programmes of 2 years of the 3 law schools in Hong Kong, namely, City University of Hong Kong ("City U"), The Chinese University of Hong Kong ("CUHK"), and The University of Hong Kong ("HKU"), who have successfully taken the Postgraduate Certificate in Laws ("PCLL") in the 3 law schools;
  - (ii) Graduates of a qualifying law degree from an overseas tertiary institution who have successfully passed the Conversion Examination and the PCLL in the 3 law schools in Hong Kong;
  - (iii) Graduates of law programmes through external study in Hong Kong, principally the LLB from the University of London, the Manchester Metropolitan University (of 3 to 4 years) and the Common Professional Examination of England and Wales through HKU SPACE (2 years part-time), who have successfully passed the PCLL.
  - (iv) The three categories in paragraphs 1(i) to 1(iii) comprise those with local or overseas undergraduate and postgraduate degrees who gain professional admission through the PCLL. After passing the PCLL, they must enter into a trainee solicitor contract with a solicitor qualified to employ trainee solicitors under S20 of the Legal Practitioners Ordinance Cap. 159 ("LPO") for a duration of 2 years and upon completion of training, they may apply for admission as solicitors.
  - (v) There is a fourth category of entrants. This category comprises those who are holders of overseas law degrees and who have been admitted as lawyers and may have practised in an overseas jurisdiction and who gain admission through the Overseas Lawyers Qualification Examination ("OLQE").
2. These entrants to the legal profession are examined by different examinations and are tested by different standards. The PCLL is to be taken before the trainee solicitor training, the Conversion Examination is to be taken by those with overseas qualifying law degrees to ensure they are competent in substantive law issues and are comparable to a standard attained by those with a qualifying law degree in Hong Kong. The Conversion Examination is to be taken prior to PCLL. As for the OLQE, candidates are tested on the standard of a newly qualified solicitor in Hong Kong.

3. In relation to the PCLL, it is administered by the 3 law schools only. As the definition of PCLL in the LPO refers to the PCLL programmes of City U, CUHK and HKU, and the Trainee Solicitors Rules Cap. 159J provides a person may only enter into a trainee solicitor contract if he has passed the PCLL, under current legislation, it will not be possible for other institutions to provide a PCLL programme which will enable their graduates to gain recognition and admission as solicitors under the LPO.
4. The three law schools enjoy self-accreditation status and they are empowered by statutes through which they were established to run the PCLL programmes, set their own admission criteria and conduct their own different PCLL examinations, subject to the PCLL Benchmarks (“Benchmarks”) issued by the Law Society (“Society”).
5. The Benchmarks set out the aim, the scope, the teaching, learning and assessment methods of the PCLL courses and prescribe that students should be accepted into the PCLL courses only if they have obtained a high 2:2 in a qualifying law degree or a non-law degree and in the case of a lower 2:2, the students can be accepted if they are able to demonstrate other strengths.
6. The OLQE is administered by the Society.
7. In recent years, views have been expressed by members of the legal profession that there is a lack of consistency in the PCLL examinations, as well as questioning why the entry to the profession is not administered by the profession itself.
8. As a result, the Council of the Society has deliberated this issue and resolved to undertake a consultation with the stakeholders on the question of a common entrance examination (“CEE”).
9. Consultants were appointed and a consultation document produced by the consultants is attached in **Annex 1**.
10. The consultation document sets out the different routes to admission as solicitors, considers the problems to which a CEE might be a solution and whether there might be alternative solutions. If a CEE is appropriate, there are then questions about when it should be taken and at what level; what should be assessed and how the CEE would relate to existing qualifications such as the law degree and PCLL. A list of questions is set out in the consultation document for the consideration of the stakeholders to which a response is requested.
11. The consultation document is posted on the public zone of the website of the Society. The consultation period runs from 1 to 31 December 2013.
12. The consultants will in due course consider all responses, prepare a report and make recommendations to the Society.

The Law Society of Hong Kong  
9 December 2013

# Annex 1

**LAW SOCIETY OF HONG KONG  
Consultation on the feasibility of implementing a common entrance  
examination in Hong Kong**

**About this consultation**

**Duration:** From 1<sup>st</sup> to 31<sup>st</sup> December 2013

**Enquiries (including requests  
for the paper in an alternative  
format) to:** NLS.CEEConsultation@ntu.ac.uk

**How to respond:** Please send your response by 31<sup>st</sup> December  
2013 to: NLS.CEEConsultation@ntu.ac.uk

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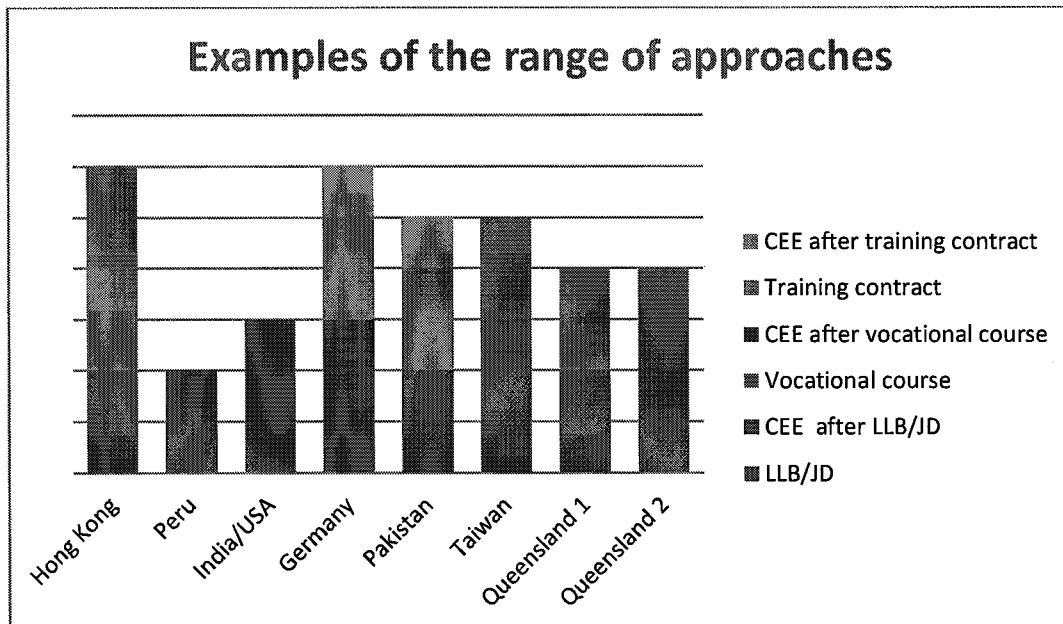
## TERMINOLOGY AND CONCEPTS

Admission	qualification to practise in Hong Kong, either by completion of the training contract or the OLQE
CEE	a generic term used in this paper for any form of "common entrance examination"
City U	City University of Hong Kong
CUHK	Chinese University of Hong Kong
Foreign lawyer	a lawyer admitted in a non-Hong Kong jurisdiction who is registered with HKLS and may practise non-Hong Kong law
GDL/CPE	Graduate Diploma in Law/ Common Professional Examination. A qualification of England and Wales designed as a conversion course into law for non-law graduates
HKLS	the Law Society of Hong Kong
HKU	Hong Kong University
Hong Kong QLD	a "qualifying law degree" which permits direct access into the PCLL, offered by Chinese U, CUHK and HKU.
JD	Juris Doctor: a postgraduate law degree
LLB	Bachelor of Laws: the undergraduate law degree
Mainland China	People's Republic of China (not including the Hong Kong SAR)
NJE	National Judicial Examination, the common entrance examination used in Mainland China.
OLQE	the examination required of foreign lawyers wishing to transfer into the solicitors' profession in Hong Kong
The Ordinance	the Legal Practitioners Ordinance (Cap 159)
Overseas lawyer	a lawyer admitted in a non-Hong Kong jurisdiction who wishes to seek admission as a solicitor in Hong Kong
PCLL	the Postgraduate Certificate in Laws required for entrants to the training contract
Position Statement	the HKLS position statement on legal education and training of 2008.
PRC	People's Republic of China (including the Hong Kong SAR).
Standing Committee	The Standing Committee on Legal Education and Training, which includes membership from the professions, providers and the regulatory bodies.
Training contract	a two year period of employment in the legal sector required prior to qualification as a solicitor in Hong Kong

## 1 INTRODUCTION

This consultation is carried out on behalf of the Law Society of Hong Kong (HKLS), the regulator for all Hong Kong solicitors. This paper explores the idea of a common entrance examination (CEE), overseen by HKLS, as a means of admitting individuals to practice as solicitors in Hong Kong. The paper considers the problems to which a common entrance examination might be a solution and whether there might be alternative solutions. If a CEE is appropriate, there are then questions about when it should be taken and at what level; what should be assessed and how the CEE would relate to existing qualifications such as the law degree and Postgraduate Certificate in Laws (PCLL).

Globally, a wide range of approaches exist for the assessment of aspiring lawyers. There are self-standing bar examinations which act as an immediate passport to qualification; and forms of common assessment of mandatory vocational courses as well as models which rely on neither. Periods of pre-qualification experience (training contracts) are prescribed, or not, or may be an *alternative* to a postgraduate vocational course. Alternative routes to qualification, through longer apprenticeships or self-standing professional qualifications, may be available. Examples of the range include:<sup>1</sup>



Statements of curricula, standards, outcomes and competences for different stages of pre-qualification education and/or for the point of qualification may, or may not, be prescribed, and if they are, in varying degrees of specificity. Where possible, in discussing different options for Hong Kong, the paper gives examples of models in use elsewhere in the world and references to descriptions of them that are publicly available in English. A simplified summary of the examples appears in Appendix IV.

### 1.1 The Working Party on CEE of the Law Society of Hong Kong

HKLS has formed a working party on a CEE. The committee comprises members of the Legal Education Committee of HKLS, the Council, practising solicitors and

<sup>1</sup> This chart does not show the relative length of each stage or differentiate between undergraduate and postgraduate academic degrees.

members of the Young Solicitors' Group. The terms of reference of the Working Party are:

- 1 To consider the suitability and feasibility of implementing a CEE in Hong Kong.
- 2 To recommend to the Standing Committee on Standards and Development and the Council if a public consultation on the CEE or such other options shall be conducted and if so to formulate in draft for the consideration of the Standing Committee on Standards and Development and the Council the necessary consultation documentation;
- 3 If appropriate, to formulate in draft for the approval of the Standing Committee on Standards and Development and the Council, new rules and/or amendments to existing legislation to provide a framework for the implementation of the CEE or such other recommended alternative.

We understand from the Working Party that:

- a) it is not the intention of HKLS to abolish or replace the PCLL; and
- b) it is not the intention of HKLS to allow a non-graduate route into qualification as a solicitor in Hong Kong.<sup>2</sup>

### **1.2 The research team**

The research team consists of five academics with a range of perspectives on legal professional education and experience of carrying out research in the field. The majority of team members have practised as solicitors and several members of the team also participated in the recent research phase of the Legal Education and Training Review in England and Wales commissioned by the three largest regulatory bodies in that jurisdiction. Although the majority of the team is based in the UK, members have experience of working in and advising on legal education in a range of jurisdictions including, in some cases, Hong Kong.

The remit of the research team is threefold:

- a) to draft this consultation document and to receive and analyse responses to it;
- b) to conduct a number of interviews with key stakeholders;
- c) to provide a report to HKLS including recommendations as a result of the consultation.

It is also envisaged that members of the research team will visit Hong Kong following submission of the report to present it to HKLS and, at HKLS' request, to participate in a members' forum on the recommendations. Further details of the research team appear in Appendix VI.

### **1.3 The target audience for this consultation**

This consultation document is addressed to lawyers, educators, students and their families, legal professional associations, members of the judiciary, users of legal services and others with an interest in the justice system. A copy of this document will be posted in the public zone of the HKLS website. Responses to this consultation document will not be published by HKLS, but names of respondents (where consent has been given) and a summary of anonymised responses will be posted on the HKLS website in due course.

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<sup>2</sup> It may be exceptionally possible for non-graduates to enter the Hong Kong profession from a foreign jurisdiction through the OLQE.

## 1.4 The consultation document

This consultation document is divided into four sections:

- The working background to the consultation;
- The current system of legal professional education for solicitors in Hong Kong;
- Discussion of the concerns about the present system which might be addressed by a CEE;
- Consideration of a number of possible responses or solutions.

The consultation document does not contain any recommendations, nor should it be read as indicating that the research team has formed any views at this stage. Any alternatives suggested are intended only to help outline and stimulate the debate. Following analysis of responses to the consultation document and to a set of interviews to be carried out in parallel, a report containing recommendations will be delivered to HKLS by the research team. HKLS may then wish to engage in further consultation on any draft policy that emerges from those recommendations.

## 2 THE WORKING BACKGROUND TO THE CONSULTATION

### 2.1 The 2001 Review

A substantial review of all legal professional education in Hong Kong was carried out on behalf of the Steering Committee on the Review of Legal Education in Hong Kong (Redmond and Roper, 2001). This investigation made a large number of recommendations, some, but not all, of which, have been implemented. Recommendations relevant to this consultation included:

- a) a recommendation (*ibid*: 44) that there should be a statement of a common admission standard for entry into, in effect, the PCLL stage;
- b) that there should be no artificial numerical bottlenecks to control numbers or set standards.

A Standing Committee on Legal Education and Training was subsequently established under s 74A of the Ordinance. Its functions are:

- (a) to keep under review, evaluate and assess-
  - (i) the system and provision of legal education and training in Hong Kong;
  - (ii) without prejudice to the generality of subparagraph (i), the academic requirements and standards for admission to the Postgraduate Certificate in Laws programme;
- (b) to monitor the provision of vocational training of prospective legal practitioners in Hong Kong by organizations other than the Society or the Hong Kong Bar Association;
- (c) to make recommendations on matters referred to in paragraphs (a) and (b);
- and
- (d) to collect and disseminate information concerning the system of legal education and training in Hong Kong.

In 2012, the Standing Committee noted that, since the Redmond-Roper report, there had been a number of substantial developments in legal education in Hong Kong. In the same year, the then President of HKLS, in a message reported in *Hong Kong Lawyer*, also rehearsed some of the history of the development of legal education for solicitors in Hong Kong (Yih, 2012a). Significant changes include:



- Developments in the other educational structures in Hong Kong (e.g. the length of secondary schooling);
- The establishment of the third law school;
- The introduction of JD programmes and double degrees;
- Increased competition for PCLL places;
- Challenges in pursuing consistency between PCLL providers;
- The introduction of the conversion examination for the PCLL for holders of non-Hong Kong QLDs;
- The differing levels and purposes of the conversion examination, PCLL and Overseas Lawyer Qualification Examination (OLQE).

As a result of these changes, the Standing Committee (2012:3) indicated that it was "considering whether to conduct another review of legal education and training". The then President suggested specifically that:

Members and stakeholders have recently been raising a question with me: whether a common qualifying examination for solicitors is worth considering?

We understand that this consultation on the specific issue of a CEE for Hong Kong is prompted by this enquiry. Although the President's initial question was in the context of, in effect, a common assessment after the PCLL, we are asked to explore a number of possible responses.

## **2.2 The concerns over the present system expressed by different stakeholders.**

Concerns about the present system have been raised publicly (e.g. Yih, 2012a, McCauley, 2012; Broomhall, 2013) as well as in response to the President's statement. We are also aware that suggestions that a CEE might be adopted have not received universal approval (e.g. Chan, 2013; Merry, 2013; Moy, 2013, Feng, et al, 2013). HKLS has kindly allowed us access to an anonymised summary of responses to the President's statement. These included questions about:

- Consistency of assessments and performance standards;
- Differing approaches at the three providers and the admission criteria of the providers;
- The role of HKLS as the regulator (in contrast to the educational providers);
- The number of PCLL places and a suggestion that a CEE could act as an alternative for those unable to access the PCLL;
- Equality with foreign lawyers and international transportability of qualifications (in both directions);
- Whether changes might increase barriers to qualification;
- A suggestion that the OLQE should be aligned to the PCLL;
- Other parts of the system, such as the PCLL and training contract;
- Whether a CEE should test academic knowledge or practical skills, and whether it might take place before or after the training contract.

For the purposes of this part of the discussion, we have grouped these concerns into four broad categories.

### **2.2.1 Regulatory control**

A professional regulator may determine that it has a role as final arbiter of who enters the profession. A means of asserting such regulatory control may be to prescribe and monitor:

- Educational structures (e.g. courses and curricula as described in section 3 below); and/or
- Competences or outcomes to be demonstrated at a particular stage or on qualification.

A regulator may focus its resource on, for example, identifying and testing at least a minimum standard for members of the profession for which it is responsible, or on seeking to assure a higher standard.

Even more specifically, a regulator may focus its resources on particular risk areas. In England and Wales, for example, the Solicitors Regulation Authority, as regulator, considered a point of qualification assessment involving issues of ethics in order to satisfy itself of fitness to practise. A CEE could, for example, focus on issues of fitness and character, or on specific regulatory risk areas such as client care, or accounts. Questions of regulation are discussed further in the context of different possible options at 4 below.

*Q 1 What, in your view, is the role of HKLS, as professional regulator, in controlling entry to the profession?*

### **2.2.2 Competition from foreign lawyers**

Hong Kong's unique position makes it a target for foreign lawyers to set up practice advising multinational corporations and as a means of accessing the Mainland and surrounding countries.<sup>3</sup> In September 2013 there were 1,275 registered foreign lawyers and 68 foreign law firms registered in Hong Kong, compared with 7,717 Hong Kong lawyers in 816 law firms (HKLS, 2013c). In addition, 24 foreign law firms have associations with Hong Kong firms. The top four jurisdictions supplying foreign lawyers are the USA, England and Wales, Mainland China and Australia.

Under the Foreign Lawyers Registration Rules, a registered foreign lawyer may not practise Hong Kong law nor employ or enter partnership with Hong Kong lawyers although in some circumstances a registered foreign lawyer can be employed by a Hong Kong firm. Foreign law firms operating in Hong Kong may, of course, be able to offer training places in the qualification system of their own jurisdictions. There is clearly a substantial amount of legal work being carried out in Hong Kong otherwise than by Hong Kong qualified lawyers or offering opportunities to qualify as a Hong Kong lawyer.

The number of registered foreign lawyers can be compared with the number of overseas lawyers seeking transfer into the Hong Kong profession through the OLQE. HKLS statistics indicate a variation in numbers over time, with a low of 41 OLQE candidates in 2007 (HKLS, 2012d), rising to 256 OLQE candidates in 2012 (HKLS, 2012a: 156).<sup>4</sup> We understand from HKLS that 242 candidates registered for the OLQE in 2013.

Some concern has been expressed in the press about the extent to which clients might prefer foreign lawyers, or foreign lawyers be exploiting a base in Hong

<sup>3</sup> See, for example, the advice of the Law Society of England and Wales (2007).

<sup>4</sup> Of these candidates, 168 passed all the heads that they were required to sit (*ibid*: 161). Pass rates for the period 1995 to 2012 inclusive are set out in HKLS 2013b: 7.

Kong to access the Mainland (Wan, 2012).<sup>5</sup> It is also argued that foreign law firms are courting local firms and seeking to enhance their local expertise by recruitment, by links with local firms or through the OLQE (Kriegler, 2012).

It is not clear whether there is any preference for foreign or for locally qualified lawyers or firms. And, if there is such a preference, is this based on brand familiarity, cultural issues, language, resources, or on differences in education and competence? Questions of competition with foreign lawyers are discussed further in the context of different possible options in section 4 below.

*Q 2 What, in your view, are the challenges, if any, to the qualification system for Hong Kong solicitors presented by foreign lawyers practising in Hong Kong?*

### 2.2.3 Workforce demand and bottlenecks

The Government of the Hong Kong SAR published a *Report on Manpower Projection to 2018* (2012). Its predictions for the legal services industry (*ibid*: A7.26) suggest an increase between 2010 and 2018 of need for “Legal, accounting, business and related professionals” of an additional 2,000 and, over the same period, an increase of need for “Legal, accounting, business and related associate professionals” [our italics] of 1,930.

Fluctuations in workforce demand are not confined to overall numbers and may also include changes in the *kind* of workforce needed. A challenge for any education and qualification system, including a CEE used as a single qualification examination for entrance to the profession, will be a design which is to be sufficiently flexible to respond to such changes.<sup>6</sup> This could be sought by adjusting the prescribed subjects, for example to react to technological developments.

The question of workforce demand is, however, linked to that of the creation of bottlenecks in the qualification system. Data from HKLS suggests that in 2011/2012, there were 608 admissions to the PCLL (see Appendix III). We estimate, from the total number of trainees,<sup>7</sup> that there are in the region of 360 training contracts available annually. It could be argued that the PCLL provides, numerically, an appropriate number of graduates each year with some provision for growth.<sup>8</sup>

As a comparison, in England and Wales, the number of places on the LPC (PCLL-equivalent course) vastly exceeds the number of training contracts available each year. There remains considerable disquiet amongst students and young lawyers in particular about the fact that success on the course does not guarantee a training contract place. A large number of students, having paid a considerable sum of money to take the LPC, is, it is said, left in limbo, with no official “title” and no

<sup>5</sup> Hong Kong qualified lawyers and firms have, under the Closer Economic Partnership Arrangement, preferential access to practice in the Mainland. See HKTDC Research (2012).

<sup>6</sup> In contrast, perhaps, to wholesale changes in, for example, the content and structure of the degree or PCLL. Nevertheless, there is already sufficient space in both the LLB/JD and the PCLL to allow students to take optional subjects which might represent new forms of practice.

<sup>7</sup> 724 at as September 2013.

<sup>8</sup> This is a consciously broad statement: we do not at this stage have data on the number of fails, or on the extent to which graduates of all the PCLLs find, and succeed in, training contracts or pupillage as opposed to any other kind of legal work. Nor do we have data on the extent to which trainees, having been admitted, are able to retain employment.

obvious, or certain, means of proceeding into the profession.<sup>9</sup> A question largely beyond the remit of this consultation is whether, if there were more PCLL graduates, attention should be paid to the regulation of the training contract. There might, for example, be an appetite to offer training places outside the conventional law firm in, for example, financial institutions.

Clearly if there is a bottleneck and a corresponding appetite for trainees (if the training contract is retained in any fully reviewed structure), one means of addressing it would be to increase the number of PCLL providers or PCLL places. This idea is evaluated further below in section 4.

*Q 3 Are there too few, too many, or enough competent solicitors qualifying through the existing system? Will demand, in your view, remain constant, or change, in the next five years?*

*Q 4 If there were more PCLL places so that there was an increase in the numbers of potential trainees, to what extent would there be training contracts for them?*

#### **2.2.4 Complexity, consistency and maintenance of standards**

The existing framework for qualification in Hong Kong is set out in section 3 below and summarised in Appendix I. There are essentially three routes, two for graduates and a third for incoming foreign qualified lawyers. Different courses and assessments are prescribed for each, with differences in curricula and the level at which assessment takes place. Allowing a variety of courses and course providers does not preclude, in principle, such courses being assessed centrally, just as schools teach towards national examinations. This has been adopted, not without teething difficulties, for parts of the Bar Professional Training Course in England and Wales (BSB, 2008). In some smaller jurisdictions, where there is a single provider of legal education, there is centralised and common assessment by default.

Unless all entrants do pursue such a single mandatory programme, delivered by a single institution/teacher (or through a single employer), there is scope for variation in the range and the standard of what has been covered. A regulator may seek to create consistency in the range by detailed prescription of the curriculum (input) or standards/competences/outcomes to be achieved (output). It may seek to promote consistency in standards by alignment to external qualification frameworks, quality assurance of providers/employers providing training and moderation of assessment tasks and marking. Another means by which consistency can be sought is to set a single, summative assessment (a CEE). In some cases the regulator's only concern is with this assessment and not with anything that precedes it.

Such an assessment may be seen as a filter, prescribing a *minimum* level for practice or for passage to the next stage. So, the All-India Bar Examination

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<sup>9</sup> In England and Wales, the regulatory body for the separate legal executive profession, IPS, will accord such individuals graduate member status, exempting them from the legal executive qualification system and conferring regulated status.

(International Bar Association, n.d. c; Law Society of England and Wales, 2010a); introduced in 2001 and taken after the LLB, has the stated objective that it will:

... assess capabilities of a law graduate at a basic level such as a candidate's analytical abilities and basic knowledge of law and is intended to set a minimum standard for admission to the practice of law. ...  
Bar Council of India, (n.d.)

Alternatively, where such an assessment is set, it may be envisaged as testing a higher level of "readiness to practise", frequently in terms of currency of legal knowledge or, more rarely, skills.

The question of what a CEE might assess, when and at what level is developed further below at 4.1.2.

*Q 5 To what extent is there a problem of consistency in the current qualification system for Hong Kong solicitors?*

### **3 THE PRESENT SYSTEM OF LEGAL EDUCATION AND TRAINING IN HONG KONG**

#### **3.1 Background and context**

The present system of legal education and training in Hong Kong is similar to that of England and Wales (see SRA, 2013; International Bar Association, n.d. b). It involves an academic stage (the LLB or JD), followed by a vocational course (the PCLL) and a workplace apprenticeship known as the training contract. Overseas lawyers and those from Mainland China are able to transfer into the Hong Kong profession by a separate assessment (the OLQE). The framework for qualification and admission to practice is governed by legislation: the Legal Practitioners Ordinance (Cap 159) (the Ordinance), which permits HKLS to create a number of subsidiary rules.

In 2008, HKLS produced a position paper on Legal Education and Training (the Position Paper) which set out the following underlying principles:

- that a commitment to education and training is a defining characteristic of a profession;
- that legal education is a lifelong process;
- that each phase of the process of legal education ... must be provided to the highest possible standards;
- that solicitors qualified through such process must be equipped with the knowledge and skills to support a high standard of service to clients;
- that solicitors acquire knowledge and skills in both the day to day practice of law and through formal educational activities; and
- that this policy, and the provision of the various phases of legal education and training, should be reviewed periodically in order to ensure the maintenance and improvement of standards.

Although the remit of this investigation is the single issue of a CEE, because that CEE, if adopted, could occur at any of several stages in the qualification system, it is important to set out in some detail the existing qualification system for intending solicitors in Hong Kong.

#### **3.2 Distinctive issues in Hong Kong**

The research team has experience of legal education in a number of common law and hybrid jurisdictions. A number of the issues facing Hong Kong, such as increasing globalisation and the impact of technology, are familiar. We note, however, the following distinctive points:

- the existence of an overarching Standing Committee on Legal Education and Training, established under statute;
- the fact the PCLL is not solely a vocational course for those who intended to become solicitors but also for those who intend to become barristers;
- the bilingual English/Chinese context;(see Yih, 2012b; Standing Committee on Legal Education and Training, 2006-2012);
- the relationship of Hong Kong legal education and Hong Kong legal practice with that of Mainland China;
- that Hong Kong is "one of the major financial and commercial centres of the world; and that Hong Kong is commercially, and in other ways, a gateway both to Mainland China and from China to the rest of the world" (HKLS, 2008: 5);
- that a large number of multi-national and foreign firms maintain offices in Hong Kong for that reason.

*Q 6 What, if any issues make the legal services/legal education context of Hong Kong distinctive?*

### **3.3 The degree stage (LLB/JD)**

#### **3.3.1 The Hong Kong qualifying degree**

The four-year undergraduate law degree is the default means of entry to the professions of solicitor and barrister in Hong Kong. In its Position Paper (HKLS, 2008) HKLS stated that the aim of a qualifying law degree should be to permit students to acquire:

- general transferable intellectual skills;
- knowledge and understanding of the general principles, nature and development of law, and of the making and interpretation of common law and legislation;
- legal values, including a commitment to the rule of law, justice, fairness and high ethical standards;
- knowledge and understanding of the contexts in which law operates;
- knowledge and understanding of the role of the legal system in serving the needs of the community, thereby inculcating a sense of social responsibility, and
- a knowledge and understanding of the legal system of China.

In order to provide access to the second pre-qualification stage (the PCLL); a Hong Kong qualifying law degree (Hong Kong QLD) must cover 11 mandatory core topics:

- Business Associations;
- Civil Procedure;
- Commercial Law;
- Constitutional Law;
- Contract;
- Criminal Law;
- Criminal Procedure;
- Equity;

- Evidence;
- Land Law;
- Tort.

Hong Kong QLDs can currently be offered only by Hong Kong University (HKU), City University (CUHK), and, as a later entrant, Chinese University of Hong Kong (Chinese U) (LegCo Panel on Administration of Justice and Legal Services, 2004).

All three Hong Kong QLD-awarding universities also offer a two-year JD programme for postgraduates (in any discipline) which also enables entry to the PCLL and CUHK also offers a JD/MBA award. Joint degrees are also available (for example, the HKU/KCL double degree in English and Hong Kong Law which is a qualifying law degree for both jurisdictions).

In the Hong Kong Qualifications Framework (n.d. b), the LLB is placed at level 5 and the JD at level 6.

### **3.3.2 Other law degrees available in Hong Kong**

Other institutions in Hong Kong may offer non degree programmes;<sup>10</sup> offer law-based modules in undergraduate degrees in Business or Business/Law degrees<sup>11</sup> or offer postgraduate degrees in law.<sup>12</sup> Graduates of such courses cannot obtain exemption from the Hong Kong QLD without taking or retaking subjects as a visiting student at one of the three Hong Kong QLD universities or completing the PCLL conversion examination (see section 3.4 below).

Institutions which do not offer a Hong Kong QLD themselves may provide routes into non-Hong Kong LLBs such as those of Mainland China or Australia (e.g. Hong Kong Shue Yan University, n.d.). Graduates of non-Hong Kong common law LLBs may, in principle, proceed to the PCLL, although they may have to “top up” required missing subjects. This is dealt with in section 3.4 below.

### **3.4 Hong Kong conversion examination for PCLL admission**

Graduates of common law degrees other than the Hong Kong QLD are required to demonstrate equivalence in two ways:

- The 11 core subjects; and
- The “top up subjects” of Hong Kong Constitutional Law; Hong Kong Land Law and Hong Kong Legal System.

It would, of course, be possible for a law degree - or similar qualification such as the GDL - offered in another jurisdiction to cover both criteria, although access to the PCLL would then be filtered through the admission criteria of the relevant PCLL provider, see section 3.5.2 below.

If core or top up subjects are missing, they can be acquired through a number of routes:

- Taking a JD with one of the three Hong Kong QLD providers;
- Taking the Graduate Diploma in English and Hong Kong Law;<sup>13</sup>

<sup>10</sup> For example, the Open University of Hong Kong LiPACE’s Certificate in Laws (n.d.).

<sup>11</sup> For example, Hong Kong Shue Yan University’s Bachelor of Commerce with Honours in Law and Business (n.d.).

<sup>12</sup> For example the Open University of Hong Kong’s LLM in Chinese Business Law (n.d.).

<sup>13</sup> This two year part-time programme is offered by the University of Hong Kong School of Professional and Continuing Education jointly with Manchester Metropolitan University in the UK (HKU SPACE, n.d.).

- Becoming a “visiting student” with one of the three Hong Kong QLD providers for those subjects only; or
- Completing the Hong Kong PCLL Conversion Examination.

The conversion examination is overseen by the Conversion Examination Board (PCLL Conversion Examination and Administration Ltd, n.d.) of the Standing Committee on Legal Education and Training. There is no required preliminary course (although some are available from e.g. HKU SPACE (2013) and IP Learning (2013); and through websites (Anon, n.d. c)).

Papers are offered only in the three top up subjects and in Civil Procedure, Criminal Procedure, Commercial Law, Evidence and Business Associations. A candidate who has not covered, for example, Criminal Law or Land Law in their prior study, cannot therefore use this route to achieve access to the PCLL.<sup>14</sup> There is no limit to the number of attempts to pass. Assessment is on a pass/fail basis at “the standard of an LLB degree awarded in Hong Kong” (i.e. Hong Kong Qualification Framework level 5). Subjects need not all be taken at one sitting and can be taken prior to completion of an undergraduate degree. The assessment is entirely written, and involves scenarios which may involve questions of the “Advise X” variety, short answer questions and/or more essay-like questions such as

Critically analyse the remedies that are available to shareholders who wish to pursue wrongs done to them personally and evaluate which of the remedies is the most effective.  
(Business Organisations, 2013)

Papers vary in length, with the top-up papers being shorter than those for core subjects. The majority of papers are open book, with Hong Kong Legal System being closed book and Hong Kong Land law allowing limited materials only.

Candidates who have already covered one or more of the core or top up subjects otherwise than through a Hong Kong QLD are required to seek exemption from the examination, or part of it, such applications being dealt with by the Conversion Examination Board. It has, however, been recommended that, presumably for consistency, the Board could liaise with both the three providers and the legal profession to help determine “whether a particular degree or qualification would be recognized as a law qualification for the purpose of the entry requirements for PCLL” (Standing Committee on Legal Education and Training, 2012). In 2012, two sittings of the assessment were held and 1,543 candidates took one or more papers, with an aggregate average pass rate of 75% (*ibid*: 3-4).

### **3.5 The PCLL**

#### **3.5.1 Conceptually**

As a bridge between the academic content of the LLB or JD and entry into the workplace, *mandatory* vocational programmes exist in only some parts of the common law world. They may last for a period of months, or for a year or more. Notably they are not present in the USA or in jurisdictions who have adapted their model from that of the USA. There is some debate in England and Wales, for example, about their purpose where they occur prior to the training contract, particularly:

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a) . It covers the seven foundation subjects required for England and Wales together with the three top up subjects for Hong Kong. Consequently, students will need to cover the outstanding core subjects for Hong Kong before being eligible for the PCLL.

<sup>14</sup> It is specifically stated that the other subjects have to form part of the “main law qualification”.



- a) whether they are intended as an introduction to matters of practice, alternatively to enable the trainee to function at a very high level immediately on entry to the workplace;<sup>15</sup> and
- b) the extent to which a broad-based vocational course, even with elective subjects, can appropriately accommodate all forms of practice (e.g. specialised corporate or private client work, or in-house practice).

In some jurisdictions, a vocational course may be an *alternative* to a training contract (e.g. New Zealand, Queensland<sup>16</sup>) and in others, non-mandatory preparatory courses may be available in preparation for self-standing bar examinations (e.g. Japan,<sup>17</sup> USA). Further, in some jurisdictions the vocational course is undertaken *in parallel with* the training contract (e.g. Republic of Ireland,<sup>18</sup> New South Wales). The Graduate Diploma in Legal Practice, for example, available as a route to qualification in a number of Australian states, allows students to incorporate varying lengths of work experience in their diploma, balanced by a reduction in the number of electives undertaken (ANU, n.d.).

The PCLL in Hong Kong is intended to be completed before starting the training contract. It is designed as a vocational course similar to the LPC or BPTC in England and Wales, the Diploma in Scotland and to the vocational programmes used in some parts of Australia and in New Zealand (New Zealand Council for Legal Education, n.d., International Bar Association, n.d. f). The PCLL is unusual, although not unique (e.g. Mauritius) in that it provides entry to more than one profession.

A concise set of benchmarks for the PCLL is set out by HKLS (HKLS, 2007). As a postgraduate certificate, the PCLL is at level 6 of the Hong Kong Qualifications framework. There is, as set out in Appendix II, some variety in the way in which the three providers address them in their curriculum and course structure.

### 3.5.2 Entry to the PCLL

Successful completion of the PCLL is required of all entrants other than those entering through the OLQE or those working and training to be foreign lawyers in Hong Kong.<sup>19</sup> The three providers of the PCLL are defined in the Ordinance and are the same three institutions as for the Hong Kong QLD. At present, two of the providers offer both full- and part-time courses.

In order to apply for a place on the PCLL, applicants must normally have obtained at least a high 2:2 at degree level (HKLS, 2007). In addition, all applicants – whether native English speakers or not – must obtain an IELTS<sup>20</sup> certificate with a score of at least 7. In addition, applicants must satisfy the admission criteria of their chosen institution. In the case of applicants with qualifications other than the Hong Kong QLD, this involves a requirement that that qualification is “recognised and acceptable” to the PCLL provider. The information publicly available about the admission criteria of each institution is as follows:

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<sup>15</sup> Clearly in those jurisdictions which use a vocational course as an alternative to a training contract, there is intended to be equivalence in the standard reached. In Australia and in New Zealand, this is promoted by use of a single set of point of admission competences.

<sup>16</sup> Queensland Law Society, n.d.

<sup>17</sup> Federation of Bar Examiners, n.d.

<sup>18</sup> Law Society of Ireland, n.d.; International Bar Association, n.d. d.

<sup>19</sup> For example a trainee from a UK law firm spending part of their training contract in Hong Kong but working towards qualification as a solicitor in England and Wales or a Canadian trainee undertaking “international articles”.

<sup>20</sup> International English Language Testing System.

- HKU (n.d. a) is explicit on its website that the CPE/GDL of England and Wales is an acceptable qualification for these purposes<sup>21</sup> and also indicates that law degrees must be common law degrees “normally from a Hong Kong or Commonwealth institution”, and that a minimum of a high 2:2 is required but that possession of a 2:1 does not guarantee a place (HKU, 2012-2013).<sup>22</sup> HKU does not interview applicants although admission personnel may ask for assessment regulations, curricula etc. so as to evaluate the original qualification. In addition, students on its joint programme with the University of British Columbia have the PCLL included as the fourth year of their programme of study (HKU/UBC, n.d.b).
- City University (n.d.) states that: “Applicants’ law degrees are assessed by reference to (a) classification, grades, marks (mainly concentrate at law subjects) and (b) the standing of the law school of the university issuing the degree”, and that a good 2:2 is required. City U may interview applicants.
- Chinese University does not interview, and explicitly states that it does not take prior possession of an offer of a training contract or pupillage into account (CUHK, 2012, n.d.). CUHK will only consider applications naming CUHK as first choice institution. A considerable amount of detail is given about documents to be submitted with the application to enable qualifications to be evaluated.<sup>23</sup>

There is clearly much interest in application to the PCLL, with substantially more applications than places awarded. Appendix III sets out statistical information obtained from HKLS about admissions to the PCLL. However the numbers of potential PCLL students may be different from the corresponding numbers of training contracts offered by employers. Currently available public data on graduates’ destinations after the PCLL (HKU, 2013; CUHK, 2013) provides some indications of the split between training contracts and other legal sector work.

### **3.5.3 The content and format of the PCLL**

Although there are benchmarks for the content of the PCLL (HKLS, 2007) and the three providers report into the Standing Committee annually, external regulation of the content and delivery of the PCLL is comparatively light. The HKLS benchmarks for the PCLL, for example, are considerably shorter than the equivalent document for legal executive courses. Whilst a detailed competency framework/set of outcomes is not provided (as it is for the legal executive courses), considerable flexibility in approach and assessment is encouraged, including integration (both in delivery and in consistency) between PCLL and the training contract. We are, however, not aware of any deliberately integrated PCLL/training contract approaches or “bespoke” PCLLs designed for particular sector or for particular firms, as are available in England and Wales. Nevertheless, each of the providers will be governed by university standards for quality

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<sup>21</sup> although GDL graduates would also have had to complete a substantial proportion of the PCLL conversion examination in addition.

<sup>22</sup> HKU also indicates that “Selection for the PCLL will be carried out by the Admissions Office in accordance with the criteria laid down by the Admissions Committee of the PCLL Academic Board (which comprises representatives of the Judiciary and two branches of the legal profession) and the Board of the Faculty of Law.”

<sup>23</sup> “Applicants with degrees awarded by overseas universities by distance learning or by completing a curriculum of short duration may be required to provide assessment report from the Hong Kong Council for Accreditation of Academic & Vocational Qualifications (HKCAAVQ) on the level of qualification obtained. If necessary, applicants will be notified by Divisions concerned / the Graduate School separately.” (CUHK, n.d.)

assurance of delivery and assessment. A comparative table of content drawn from the publicly available material of the three PCLL providers appears at Appendix II.

### **3.6 Training contract**

#### **3.6.1 Conceptually**

The “training contract” or period of “articles” is usually envisaged as a period of apprenticeship in a legal workplace, required prior to formal qualification. The purpose of a training contract is not always closely stated and it is rare that the totality of what has been learned during the training contract is formally tested on its completion. The period may be thought of more as socialisation, or as work experience, than as a period of learning contributing to the standard of performance expected at the point of qualification.

Internationally, the length of periods of apprenticeship varies from months to years. In some countries (e.g. in India, Peru, the Philippines, South Korea’s new system and in the USA)<sup>24</sup> no formal period of pre-qualification experience is required.

In the USA, a bar examination, at the level of an individual state, is virtually universal, over and above completion of the postgraduate law degree (JD). There is no training contract requirement (see ABA, n.d. a and b). The fact that individuals may be entitled to practise without supervision directly from law school does not suggest that this is desirable and some employers and others in the USA adopt schemes for newly qualified attorneys which might resemble the support given under a training contract (e.g. Furlong, 2010; Westfahl, 2010; CUNY, 2012). It should also be remembered that a law degree will be a second degree for students in North America. There is some evidence that an oversupply of newly qualified attorneys, coupled with increased student debt, is pushing individuals into independent practice early and increasing pressure on ethics and quality of performance (Illinois State Bar Association, 2012).

In some countries, periods of articles or prior work experience are treated as an alternative to the degree stage. In South Africa, for example, an extended period of articles is an alternative route to qualification which bypasses the LLB, but not the vocational course (Law Society of South Africa, n.d.). Similarly, in England and Wales, members of the Chartered Institute of Legal Executives may proceed directly into the vocational course without having obtained a degree (SRA, 2013).

In other countries, a period of articles may be an alternative to a PCLL-equivalent vocational stage (e.g., New Zealand, Queensland and in the future in Ontario).

Where there is a requirement for pre-qualification work experience, the location and content of that experience may be closely prescribed (England and Wales, Hong Kong), in pro bono work or in a state organisation (e.g. Chile<sup>25</sup>) or in a variety of organisations (e.g. Germany<sup>26</sup>). Periods of work experience may, as in New South Wales, be perceived as, along with vocational courses, part of an integrated period of postgraduate “professional legal training” (Legal Professional Admission Board of New South Wales, n.d.; International Bar Association, n.d. e). The question of assessing what has been learned during a training contract stage is discussed further at 4.2.3 below.

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<sup>24</sup> For Peru, see International Bar Association, n.d. h; the Philippines, see Santos-Ong, 2012; Supreme Court of the Philippines, 2013; Spengler, n.d.; for South Korea, Kim and Cho, 2010; Korean Bar Association, n.d.

<sup>25</sup> Law Society of England and Wales, 2009.

<sup>26</sup> See Leith, 1995; Lonbay, 2001,.

### 3.6.2 The training contract in Hong Kong

The Position Paper identifies the aim of a training contract in Hong Kong as being to provide:

...the opportunity to gain experience in the basic skills and characteristics associated with the practice and profession of a solicitor of the High Court.

Under the Trainee Solicitors Rules (HKLS, n.d. c) a training contract must last for two years (although up to six months may be deducted for relevant prior experience). Some secondment to in-house practice or outside Hong Kong is permitted. The supervisor of a trainee must, under the Ordinance (s 20) be at least five years qualified. Forms of trainee contract prescribed by Practice Direction E made under Rule 8 of the Trainee Solicitors Rules (HKLS, n.d. c) require trainees to be given the opportunity to learn the principles of professional conduct and to practise a range of skills<sup>27</sup> and to have training in at least three of a specified range of practice areas.

Although individual firms may have expectations of what trainees should learn, and appraisal systems, there is no formal requirement to assess what has been learned during the training contract. Trainees are, however, required to complete at least 15 CPD points each practice year (HKLS, 2012-2013) and to complete the mandatory Risk Management Education Programme (HKLS, n.d. b).

A checklist for trainees (HKLS, n.d. a), however, provides in some detail expectations of the range of experience – both areas of legal practice and transactions to participate in – and in some cases, outcomes to be achieved. It is, however, explicitly framed as guidance and it is not clear what if any sanction is to be applied for failure to complete it. The outcomes do not, therefore, of themselves create a CEE although it is clearly the intention of HKLS (2008) that an outcomes-based approach should be taken to the training contract. No explicit statement of level of performance (e.g. Hong Kong Qualification Framework level 6 or above) is provided.

### 3.7 The OLQE

The Overseas Lawyers Qualification Examination (OLQE) for overseas practitioners who wish to transfer into the solicitors' profession in Hong Kong is overseen directly by the Standing Committee on Standards and Development of HKLS under the Overseas Lawyer (Qualification for Admission) Rules (HKLS 2013a and b). As with the conversion examination, there is no mandatory course attached, although a number of providers offer preparatory classes<sup>28</sup> and some informal online support is available (Anon, n.d. a and b). The course was reviewed by a working party of HKLS from 2001/2002 and some additional proposals for change are proposed for 2014 (HKLS, 2012c). Those who successfully complete the OLQE become entitled to practise immediately, without passing through either the PCLL or the training contract.

Under the Overseas Lawyer (Qualification for Admission) Rules made under s 4(1)(b) of the Ordinance, lawyers from other jurisdictions can be admitted if they:

- are overseas lawyers, as defined;
- are in good standing in their home jurisdiction; and
- satisfy admission and assessment requirements.

<sup>27</sup> Communication, practice support, legal research, drafting, interviewing, negotiation and advocacy.

<sup>28</sup> E.g. IP Learning, 2013; Paul Kent Legal Training, 2013 and Lex Omnibus, 2013.

A certificate of eligibility is required certifying these criteria, but an IELTS certificate is not.

Applicants from common law jurisdictions with at least five years' experience must normally have one of:

- an undergraduate degree in law;
- a "qualification which is substantially equivalent to that granted by a Hong Kong tertiary institution and in addition an examination equivalent to the Common Professional Examination Certificate of the University of Hong Kong"; or
- a period of "not less than five years as a trainee solicitor or articulated clerk";<sup>29</sup>
- and either
  - have studied or obtained experience in Contract, Tort, Property, Criminal Law, Equity and Constitutional and Administrative Law (or their equivalents); or
  - have passed the examinations prescribed by HKLS (i.e. the relevant aspects of the OLQE, which may in this case be completed prior to completion of the degree, five years' articles etc.)

and in any event, must pass the OLQE papers in Conveyancing, Commercial and Company Law and Accounts and Professional Conduct. Exemption from any of the papers is potentially available on a case by case basis.

Applicants from common law countries with less than five years' experience but with a degree or its equivalent who have completed one of

- at least two years as a trainee or articulated clerk;
- at least two years post-admission experience; or
- a combination of the two of at least two years in aggregate;<sup>30</sup>

must in any event pass all the OLQE papers. Exemption on a case by case basis is not available. Although the two year period is clearly intended as an equivalent to the training contract, the guidelines for content and outcome of the training contract in Hong Kong are not applied to the period for incoming overseas lawyers.

Applicants from non-common law countries with at least five years' experience must normally pass all the OLQE papers together with an oral assessment in principles of common law. Those with at least two years' experience must normally complete a year's full time course in named common law subjects, the PCLL and at least three years' trainee and/or post admission experience.

The OLQE papers are divided into (at present) five "heads":

Head I – Conveyancing;

Head II – Civil and Criminal Procedure;

Head III – Commercial and Company Law;

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<sup>29</sup> This provision, requiring experience to have been gained in a particular role, does not therefore cover non-graduate paralegals. The five years' articles alternative to graduate entry to the profession in England and Wales has been abolished although clearly there are existing practitioners who qualified by that route. It has been replaced in practice by the legal executive qualifications which allow Chartered Legal Executives to transfer into the solicitors' profession if they wish.

<sup>30</sup> Earlier provisions that allowed an overseas lawyer working as a paralegal in Hong Kong to count that experience towards this requirement have been repealed.

Head IV – Accounts and Professional Conduct; and  
Head V – Principles of Common Law (oral).

The written assessments are 3½ hour open book examinations involving, in the case of the law papers, a sequence of short scenarios (which may contain extracts from legal documents) and short-answer questions. The accounts and professional conduct paper is split into two parts, one with short-answer questions on accounts and the other on professional conduct. The Head V oral assessment comprises 30 minutes reading time of a paper,<sup>31</sup> with an English dictionary and a law dictionary as a resource, followed by up to two hours questioning from a panel. “Standards” are set out for each head setting out outcomes and that the level required is that of “a newly qualified (day one) solicitor in Hong Kong” (HKLS, 2013a and b).

Appendix I includes a mapping of the heads of the OLQE against the 11 core Hong Kong QLD subjects, the mandatory requirements of the PCLL and the guidelines for the training contract. There is no requirement, for example, that OLQE candidates demonstrate competence in negotiation or in wills and estate management (a compulsory topic in the PCLL). OLQE graduates obtain rights of audience in the lower courts on admission without necessarily – depending on the qualification regime of their initial jurisdiction and their prior experience – either having received training or experience in advocacy, or demonstrating competence in it. Lawyers transferring through the OLQE are, however, the only Hong Kong lawyers currently formally tested as at the point of admission (implicitly a higher level than that of the PCLL).

### **3.8 Other legal professions in Hong Kong**

We set out, by way of comparison, the qualification systems for other legal professions in Hong Kong. Of these the most significant at present is that for barristers, because of the joint purpose of the PCLL.

Qualification for the **Bar** (Hong Kong Bar Association, n.d. a and c) in Hong Kong mirrors the solicitors’ route at least until the compulsory elements of the PCLL are complete. Intending barristers are then required to specialise at the elective stage of the PCLL. Solicitors with at least three years’ post-qualification experience and overseas lawyers who have completed the Barristers Qualification Examination (Hong Kong Bar Association, n.d. b) then all proceed to the pupillage stage.

The Barristers Qualification Examination involves five papers (individuals may be exempted from one or more):

- Civil Law, Procedure and Evidence, Professional Conduct and Advocacy;
- Contract and Tort;
- Criminal Law, Procedure and Evidence;
- Hong Kong Legal System; Constitutional and Administrative Law, Company Law;
- Property, Conveyancing and Equity.

All apart from Advocacy are by open book written examination. The Advocacy assessment is by a skeleton argument and 30 minute submission. In the written papers, substantive law tends to be tested by way of scenario and “advise X”,

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<sup>31</sup> The 2011 paper demonstrates a variety of types of question, from the very specific (“name the major courts and tribunals in Hong Kong”) through commentary on judicial dicta to scenario-based analysis.

whilst procedural law is tested by scenario and short-form questions (Hong Kong Bar Association, n.d. e).

The Bar Association provides a statement of the standard expected in all the assessments (*ibid*: 10):

The standard expected is that of a competent junior barrister. An examiner is entitled to expect a junior competent barrister to have a good working knowledge and understanding of the subject and to demonstrate the ability to apply that knowledge and understanding correctly, and in a manner appropriate to everyday legal practice.

Although candidates have access to the High Court Library, there are no required preparatory courses.

Subject to reduction for prior experience, pupillage is of one year divided into two periods of six months, completion of each of which is on submission of a completed pupillage logbook signed by the pupilmaster. After the first six months has been completed, a limited practising certificate can be obtained (s 31 of the Ordinance), with a full practising certificate on completion of the full period. Minimum requirements for the content of the experience – which is expected to include both civil and criminal exposure – are provided (Hong Kong Bar Association, n.d. d).

Several institutions offer courses for **legal executives** (HKLS, 2012b). HKLS provides a detailed set of benchmarks for legal executive courses, including learning outcomes (HKLS, 2011). In contrast to the benchmarks established for the PCLL, the outcomes for legal executive courses are prescribed in some detail. Although a number of the mandatory topics overlap with the Hong Kong QLD and PCLL, it is clear from the language of the outcomes that their minimum level is envisaged as being lower than the Hong Kong QLD/PCLL (Hong Kong Qualification Framework level 4).<sup>32</sup> There are routes from legal executive professional diplomas<sup>33</sup> into non-Hong Kong LLBs, into the Graduate Diploma in English and Hong Kong Law and possibly, for mature students, into Hong Kong QLDs.

Some legal executive courses, such as the Diploma in Legal Studies offered by HKU SPACE (n.d. b) are also clearly intended to accommodate **paralegals**. Overseas institutions may also offer courses and accreditation to those working in Hong Kong.<sup>34</sup>

Hong Kong **notaries** must have prior qualification as a solicitor (Hong Kong Society of Notaries, n.d.). The Hong Kong Institute of **Patent Attorneys** allows some exemption from its own assessments for LLB/JD/PCLL graduates, solicitors and barristers (but the reverse is not true) (Hong Kong Institute of Patent Attorneys, n.d.). The Hong Kong Institute of **Trade Mark Practitioners** accepts membership from solicitors, barristers and others practising in the field and through a Certificate in Hong Kong Trade Mark Law and Practice which has been offered by HKU SPACE (Hong Kong Institute of Trade Mark Practitioners, n.d.).

### 3.9 Other professions in Hong Kong

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<sup>32</sup> Although statements of competency standards are being developed across a range of occupational activities by the Hong Kong Council for Accreditation of Academic and Vocational Qualifications, (Hong Kong Qualifications Framework, n.d. a) these have not (yet) impacted on the legal services sector. They are used in some of the other professions in Hong Kong (see Appendix V).

<sup>33</sup> or similar courses such as the Diploma in Legal Studies of HKU SPACE (n.d. b).

<sup>34</sup> such as the Chartered Institute of Legal Executives, the National Association of Licensed Paralegals and Institute of Paralegals in the UK.

An outline of the qualification structures of other professions in Hong Kong, drawn from the professions represented by the Hong Kong Coalition of Professional Services, appears in Appendix V. A variety of combinations of equivalents to the training contract, and of final qualifying interview or assessment, is used.

## **4 THE WAY FORWARD?**

### **4.1. Introduction**

The remit of the research team is, within the context of a possible CEE, to explore different options for reforming and improving the current system; weighing up the advantages and disadvantages and examining feasibility, probability and implications for Hong Kong. This task can be divided into three elements, each of which informs the others:

- What is the purpose of a CEE?
- When should it be taken and at what level?
- What should it assess, and how should it be assessed?

#### **4.1.1 What is the purpose of a CEE**

If all candidates are required to take the same assessment, the purpose of that assessment may be:

- a) as with the BCAT (BSB, n.d.) in England and Wales, to filter out the bottom 10% who are thought unlikely to be successful in the next stage;
- b) positively to assess "aptitude";<sup>35</sup>
- c) to seek a consistent baseline between candidates entering from different educational backgrounds);<sup>36</sup>
- d) to manage risk by seeking a minimum level of knowledge or performance in key areas only;<sup>37</sup>
- e) to seek to ensure that a level of current legal knowledge is retained at a particular stage;
- f) to seek to ensure a level of actual performance in practice, e.g. to avoid negligence;
- g) additional purposes such as to demonstrate equivalence with the requirements of another profession or jurisdiction.

#### **4.1.2 When should a CEE be taken, and at what level?**

The purpose of a CEE to a large extent defines when it should be taken. If it is intended to filter out, to assess early aptitude or to create a consistent baseline across graduates of different LLBs or PCLLs, it is appropriate for it to take place prior to qualification. If it is intended to assess currency of legal knowledge and/or actual performance for practice, it is appropriate for it to take place at the point of qualification.

This will also define questions of level. For example, if it is important to assess whether knowledge of the law is still current at the point of qualification, it may be appropriate for the level of the assessment to be pegged to the LLB/JD or PCLL. If actual performance for practice is to be assessed, then a level higher

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<sup>35</sup>As with the LSAT used in the USA, and LNAT by some universities in the UK, to assess aptitude for entry into academic law degrees. For discussion of "aptitude tests", see LNAT, n.d.; LSAC, n.d., Baron, 2011, Dewberry, 2011; and LETR Literature Review (Webb et al, 2013, Chapter 4).

<sup>36</sup> For example, LLBs from different institutions; an LLB route or an apprenticeship route, incoming foreign-qualified lawyers, All India Bar examination or Irish final examination

<sup>37</sup> For example, substantive legal knowledge, ethics, client care.



than that of the PCLL might be expected, to allow for the additional learning in practice that has taken place during the training contract.

In countries where there is *both* a CEE of some kind *and* a requirement for a training contract, practice differs as to the timing of the CEE.

CEE before the training contract

In Mainland China, the national judicial examination (NJE) is taken after completion of LLB or LLM/JM and prior to a one year training contract (International Bar Association, n.d. g). In Taiwan, a bar examination is taken prior to a short vocational course and to a short training contract (Chen, 2012; Zhang, 2012). In some jurisdictions, a degree is perceived simply as providing exemption from the first stage of a diet of professional examinations, with the remainder of those professional examinations taken prior to the training contract (e.g. Japan, Sri Lanka,<sup>38</sup> Ireland).

CEE during or after the training contract

In Vietnam, the bar exam is taken after the training contract (Khoa, 2002; Law Society of England and Wales, 2010b). In Pakistan, an admission test, including an interview with a judge, is taken after completion of a year's training contract or pupillage (Pakistan Bar Council, n.d.). In Denmark, a written and oral assessment is taken after the training contract.<sup>39</sup>

In Ontario, at present, the Licensing Examination may be taken before or during articles and a Professional Responsibility and Practice Course is completed, and assessed, prior to the end of the period of articles (Law Society of Upper Canada, n.d.).

#### **4.1.3 What should a CEE assess, and how should it be assessed?**

The concept of a CEE involves an assumption that a consensus can be reached on the topics that are sufficiently important – or sufficiently high-risk – to be assessed.

Conventional bar examinations tend to be focused on knowledge, analysis, problem solving, sometimes ethical problems and some elements of drafting. The US bar exams are possibly considered (outside the US) the archetype of a free market, common law approach to admission. It is, therefore, useful to consider comment from those with experience of them. The Society of American Law Teachers produced a set of questions in 2010 for states considering the adoption and detailed design of bar exams, including proposals to increase both validity and reliability of assessment (SALT, 2010). It should also be noted that they invited states to consider alternatives, including, in our terminology, training contracts and vocational courses (SALT, n.d.). The recent draft report of the American Bar Association Task Force on the Future of Legal Education (ABA, 2013:25) commented, of US state bar examinations:

Shifting examination design toward more emphasis on assessment of skills and less tendency to add testing on substantive subjects would favorably influence legal education.

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<sup>38</sup> Legal Studies Awareness Forum, 2012; Incorporated Council of Legal Education, n.d.

<sup>39</sup> See Advocatsamfundets, 2008; Stockholm Institute for Scandinavian Law, 1957-2010; International Bar Association, n.d. a.

Knowledge, analysis, problem solving and the like are easier to assess than other practice skills, such as research, advocacy, interviewing and negotiation. Some jurisdictions (e.g. Mauritius,<sup>40</sup> Denmark) include skills assessments, typically advocacy, in centralised or common assessment structures. A model drawing on approaches used in medicine is used in the Qualified Lawyers Transfer Scheme in England and Wales – the equivalent to the OLQE (SRA, 2012). The most distinctive aspect of the QLTS is the use of OSCEs (objective, structured clinical examinations) – short tasks involving knowledge and skills such as writing, drafting, interviewing and advocacy.<sup>41</sup> Principles adapted from medical education are also used to set and calibrate assessment standards (see ICF GHK, 2012, and Fry et al, 2012).

Assessment design needs validity, reliability, fairness and feasibility.<sup>42</sup> These are balanced by cost and resource of monitoring and quality assurance of the assessment when delivered.

### Validity

This is the alignment of the assessment with what it claims to test. It will involve decisions about the range of topics, skills and attributes tested, and the way in which they are tested. It is, for example, inappropriate to attempt to test oral advocacy skills by a completely written examination. We can also include here elements of “practice validity” – the extent to which what is expected and tested in the assessment mirrors what is actually done in practice.<sup>43</sup>

From the point of qualification, it is possible to look backwards, determining what skills, knowledge and attributes<sup>44</sup> are desirable at that point and at what level; establish where these may be best learned and test accordingly. Such an approach would be focussed on practice, but has implications wider than the CEE, possibly for all of the Hong Kong QLD, the conversion course, the PCLL and the OLQE. Full investigation of what is required for practice is not an easy task, although there is a clear trend in common law countries to attempt it (see references at section 4.2.2). Nevertheless, if the purpose of Hong Kong legal education is, as stated in the Position Statement, to fit students for a particularly Hong Kong practice – already recognised in the bilingual aspects of its education – there is a case for investigating what that practice requires.<sup>45</sup>

### Reliability

This is the consistency and rigour of the assessment. If the same assessment could be retaken by the same person, in the same circumstances, would it achieve the same result?

### Fairness

This includes assessing only those topics which candidates were told would be tested, assessing at the level candidates can reasonably be expected to have

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<sup>40</sup> Attorney-General’s Office, 2011.

<sup>41</sup> As HKLS indicates that trainees should be competent at the point of admission to exercise their “rights” of audience, there may be a case for a point of qualification assessment of advocacy competence.

<sup>42</sup> In some professions these factors are explored and mapped in some depth. See for example the approach of the General Medical Council Postgraduate Medical Education and Training Board (2007). Some of these issues are also explored by the Society of American Law Teachers (2010).

<sup>43</sup> Approaches to common assessment need not exclude an element of assessment being devolved to employers.

<sup>44</sup> Including an ability to continue to learn and to improve one’s practice focused on the future.

<sup>45</sup> At its simplest, it might result in a mandatory topic relating to financial services in the LLB/JD/PCLL.

reached at the point the assessment is taken and allowing for diversity between, for example, men and women or older or younger candidates, and candidates from different backgrounds.<sup>46</sup>

#### Feasibility

This involves more pragmatic issues. More usefully effective assessments can require greater resources. Assessment of skills, and attributes such as "professionalism", can be more difficult, more resource intensive, and more expensive.<sup>47</sup> Where monitoring and quality assurance takes place not only in relation to the assessment, but also of the course or workplace experience which leads up to the assessment, there is an additional burden. There is, of course, not simply a question of increased resource or increased cost, but on whom it falls: regulator, profession; employers; institutions or candidates.

### 4.2 Possible responses or solutions

The research team has been asked specifically to set out some possible responses or solutions in this document. This list of possible approaches is not intended to be exclusive, but to engage participants and to inform discussion and debate. For the purposes of this consultation document, this part of the discussion focuses on

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<sup>46</sup> This question, as it affects native English and native Chinese speakers, is one of particular significance for Hong Kong.

<sup>47</sup> See, for example, the discussion, in England and Wales, of a balance between a desire for a common measure against feasibility in proposals to centralise assessments on the Bar Professional Training Course: (BSB, 2008: 61-62):

#### **Central assessment**

147. Both the Neuberger and the Wilson Reports contain recommendations that the final examinations should be set and marked centrally. This would have the benefit of ensuring a common exit standard across all the providers.

148. We agree that, so far as possible, papers should be set and assessed centrally for the reason given; but we do not think that it is feasible to apply central assessment across the entire course.

149. The most obvious case for this treatment are the examinations in the knowledge-based parts of the course. The same [multiple choice questions] MCQs and [short answer questions] SAQs can be set to all students on the same day and marked according to a commonly agreed set of marking matrices. MCQs could be marked electronically. The options are also potentially capable of being set and assessed centrally.

150. In the skills areas the exercises themselves could be set centrally, but assessment in some cases is much more difficult. Advocacy exercises and conferencing can only be judged *in situ* over a period of time. The exercises themselves could be set centrally. While it might be argued that each student should be assessed by two examiners, one from outside his or her [course] provider, such a system would in our view complicate the administration of the examinations and distinctly add to their cost. In the skills areas such as advocacy and advising in conference we do not think that the BSB can go beyond establishing a framework for a common set of exercises and a common marking scheme.

#### **Board of Examiners**

151. To carry into effect the proposal that examinations should be centrally set and marked the BSB will have to set up a central Board of Examiners or similar body to oversee the process. The Board should contain a mixture of experienced practitioners who will have a good sense of the level and type of problems which should be set, persons with experience of Examination Boards, and representatives of each of the [course] providers. It would be necessary to have sub-groups to deal with each of the papers. ....

152. Centralisation will emphasise the importance of external examiners, especially in the SAQs, opinion-writing and drafting, advocacy and advising in conference. A strong and active body of external moderators will also be required; but centralisation should simplify the work of the moderators.

the purpose, timing and level of assessment, and questions of feasibility. There is also an exploration of the advantages and disadvantages for the regulator, candidates, employers and providers. It is assumed that the common objective of all approaches is to secure the best possible provision of legal services for the client.

#### **4.2.1 Retain the status quo**

A “no change” option is deliberately included. The existing qualification system is well-known and has a developed supporting infrastructure. It can be argued that there is already sufficient flex within it to allow individual providers, such as the three QLD/PCLL providers, to adjust their programmes to meet the developing and changing needs of employers or, indeed, as in England and Wales, to develop PCLLs tailored to particular legal sectors.

The formalisation of a distinct legal executive profession is too recent for its implications on the solicitors’ profession to be seen. It may develop over time as a distinct profession, taking up some of the workforce demand for lawyers of a particular kind. On the other hand, to the extent that the existing system does not produce lawyers with the right knowledge and skills; or produces too many part-qualified graduates, or too few qualified lawyers, retaining the status quo leaves it to the market to address questions of bottlenecks and competition from foreign lawyers.

#### **4.2.2 Address the concerns by means other than a CEE**

Although the remit of this consultation is that of a CEE specifically, it is, of course, possible that concerns over the existing structure could be addressed by other means.

Review the whole of the qualification structure

A different approach to the concerns identified in section 2.2 could involve a complete review of the qualification system, including curricula, outcomes, standards and assessments at each stage rather than the CEE element in isolation. This could not, of course, be completed in the very short term and could involve a great deal of additional empirical enquiry. It would also involve retaining the status quo whilst the enquiry took place and, of necessity, consulting with the Bar.

Prescribe demonstration of competences or outcomes instead of a separate CEE

In an increasing number of jurisdictions, a set of outcomes or competences tied to the point of qualification has been created.<sup>48</sup> In certain Australian states and in New Zealand, such sets of competences can be used to help promote consistency of result amongst candidates who have pursued alternative educational routes. In the recent examples of Canada and the USA, for example, the task of determining the competences was undertaken with the aid of considerable empirical work (Federation of Law Societies of Canada, 2012; National Conference of Bar Examiners, 2012).

Once a set of such competences has been created it is then possible to determine sub-strata of lower level competences to be achieved at earlier stages of the

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<sup>48</sup> For example, APLEC 2002, 2012; Law Society of Scotland, 2009, 2010, n.d.; Webb et al, 2011; SRA, 2011, 2012. See also the LETR final report for England and Wales (Webb et al, 2013).

qualification system. A common set of competences designed for practice in Hong Kong could be applied to both local candidates and overseas transferees.

In such a model, the regulator might, for example, concern itself only with the setting of outcomes and the standards by which they are demonstrated, and might choose:

- to allow complete freedom of choice in the means by which a candidate chooses to acquire the competences; or
- to prescribe at least some parts of the system by which the competences should be acquired (e.g. the QLD and PCLL but not the length of the training contract).

If there was complete freedom of choice, suitable mature candidates might qualify earlier, as they might be able to demonstrate the competences quickly on the basis of prior experience in the workplace. However, without the protection of having to complete a prescribed period of study or training contract, candidates might find themselves under pressure (from employers or by reason of cost) to present themselves for assessment before they are ready. We are not aware of any jurisdiction which has yet taken this approach and, as noted above, a non-graduate option is not under discussion for Hong Kong.

Those jurisdictions which use such frameworks prescribe at least some of the system. Established structures such as the LLB, JD or PCLL might be used as preparation for assessment of the competences. Although a number of jurisdictions are attempting the competences route, there is so far little history through which to examine the effect of this approach.

Create more PCLL places/accredit additional PCLL providers rather than create a CEE

The question of numbers was previously considered when the third university joined the Hong Kong QLD/PCLL providers group (LegCo, 2004). It was recently revisited by the three PCLL providers:

Questions about the entry requirements for the PCLL, the limited number of places available in the PCLL programmes and alternatives to this, as well as the impact on the employment market of large numbers seeking entry to the profession, are examples of matters that can and should be reviewed.  
Feng et al (2013:15)

Although it would require legislative approval, a bottleneck could be addressed by creating more PCLL places or providers. This would provide increased choice for students – with the potential for increased variety and tailoring in PCLL curricula. If additional students pass the PCLL and go on to qualify, it could increase the number of Hong Kong lawyers in a position to compete with foreign practitioners. The regulatory infrastructure for monitoring the PCLL already exists and could be extended to additional suitable providers, limiting any increase in regulatory burden. We understand from HKLS, however, that it may not have sufficient resources to monitor additional PCLL providers.

However, increasing PCLL numbers does not of itself address any existing inconsistencies in standard, or guarantee training contract places for a larger number of PCLL graduates. Nor does it guarantee the aptitude or quality of the additional PCLL students.

#### **4.2.3 Adapt existing structures**

Alternatively, it might be possible to adapt existing structures to address the concerns identified. There may be some advantages in resource, familiarity and regulatory burden in doing so.

#### Centralise the assessments of the PCLL

This model would retain the separate PCLL courses, but demand that students at all of the institutions took the same, pooled, assessment. There are divergent schools of thought about centralising assessments. This is demonstrated, for example, by the situation in England and Wales where ILEX Professional Standards prides itself on use of centrally set assessments for trainee legal executives; the Solicitors Regulation Authority has rejected centrally set assessments for intending solicitors and the Bar Standards Board has adopted a mixture of locally and centrally set assessments for intending barristers (see BSB, 2008; 2013).

If a central assessment were set for the PCLL – and historically the experiment has been made – it would, if it covered core subjects, need to involve the Bar. In terms of regulatory monitoring for HKLS, the regulatory burden for HKLS might be lowered in terms of regulating the assessment itself, as a single set of papers and tasks.

The regulatory burden might, however, be increased in terms of quality assuring the performance of the different institutions against the centralised assessment and co-ordinating the setting, marking and moderating of the assessment, unless, as with the conversion examination, this was delegated to an outside organisation, or the additional burden was placed on the providers. It would also appear, see Appendix II, that at present the curricula of the three providers differ quite substantially in structure and a considerable degree of adjustment might need to take place to render centralised assessment, even of the core mandatory subjects, possible. A centralised assessment would affect the providers' ability to exercise academic autonomy in design and assessment of their courses. In addition, to the extent that any of the providers is perceived as targeting its course at employment in a particular legal sector, that effect would be removed by a central assessment.

#### Assess the training contract at equivalence with the OLQE instead of a separate CEE

"Assessing" the training contract, or what has been learned in it, has been attempted. Such an assessment may be on-going and formative during the training contract, but targeted at standards set for the point of admission. It may, as with the work-based learning pilots conducted by the Solicitors Regulation Authority and ILEX Professional Standards in England and Wales, involve significant contribution by employers to both support and assessment.<sup>49</sup> As indicated above, in some jurisdictions, the training contract and vocational course are perceived as components of a single educational structure, or as alternatives achieving the same end.

A training contract could be assessed by reference to a set of competences; or through a combination of employer sign-off and discrete course and/or assessments,<sup>50</sup> possibly adapted from the OLQE or on identified risk areas such as ethics. The opportunity could be taken to review the OLQE at the same time.

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<sup>49</sup> See SRA, 2009; IWBL, 2010; BMG Research, 2012; ILEX Professional Standards, n.d a, b, c.

<sup>50</sup> In some jurisdictions, although the training contract itself may not be formally assessed, short courses on high risk aspects of practice, such as accounts or ethics, are, however, sometimes mandatory during the training contract and these may be formally assessed. Some of the other

Such an approach would require trainees to be given opportunities to undertake work that will allow them to reach assessment standard. There would be challenges in creating an assessment that is sufficiently precise to provide reassurance as to consistency, whilst being sufficiently flexible to allow for the wide variety of work carried out in legal practice.<sup>51</sup> Some firms will, however, already have well-developed internal mechanisms for appraising trainee performance which could be harnessed to a training contract assessment, although the additional requirements could hamper some firms in taking trainees. The extent to which existing HKLS training contract monitoring could be extended into moderation and checking of employers' assessments of trainees, or whether this process – and the process of assessment itself – could be delegated to another organisation, or to the providers, would also be a factor in assessing any increase in regulatory burden.

Extend the OLQE as a self-standing CEE to all applicants for admission

The basic infrastructure already exists to administer the existing OLQE to all applicants for admission. A centrally set written examination is comparatively easy to create and check. It could be administered in secure surroundings to a large number of candidates simultaneously.<sup>52</sup> Preparatory courses, as for the OLQE, need not be prescribed, but the market might ensure that they were available to those with the personal resources to take them.

There would be a greater burden of marking and moderation of scripts. The market for preparatory courses, much of which is in the private sector, could expand, although this might then put pressure on HKLS to monitor and quality assure providers of preparatory courses in a way they currently do not. Providers of PCLLs and other law courses, as well as training contract supervisors, could choose, or find themselves obliged by the market, to help trainees prepare. For the PCLL providers, there might be issues of conflict between academic autonomy and pressure to teach to the test.

It should, however, be noted (see Appendix I) that the scope of the existing OLQE assessment does not, at present, replicate the topics and skills that candidates following the PCLL + training contract route are required to cover. In this model, the scope of the OLQE should be reviewed to determine what it should assess. If adjustments were substantial, then this would amount, in effect, to design of a new self-standing CEE.

#### **4.2.4 Design fresh CEE structures**

Set a new self-standing CEE prior to entry into the training contract in addition to the PCLL

Placing a CEE at this point seeks to capture knowledge, skills and attributes prior to the trainee entering the workplace. Its results may, therefore, be of assistance in recruiting. It does not, however, predict how the knowledge, skills and attributes might be applied in practice. Unlike the existing PCLL assessments, such a CEE could focus specifically on topics of relevance to the solicitors'

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professions in Hong Kong include reports on what has been learned in practice as part of their qualification procedures (see Appendix V).

<sup>51</sup> Interviewing or advocacy, for example, may be regular activities for some trainees, and completely unknown to others. Ethical problems may be dealt with routinely by some trainees, but escalated to senior lawyers in other organisations.

<sup>52</sup> For a detailed example of the challenges of setting, marking, moderating and quality assuring a centralised assessment, see BSB, 2013.

profession. Alternatively, it could, as indicated above, focus principally or solely on high risk areas of interest to the regulator, rather than repeating the PCLL topics.

There is an additional burden on trainees in taking, possibly very close together, both PCLL and CEE assessments. It is likely, therefore, that there would be pressure on the PCLL providers – and possibly on the QLD – to begin to teach to the CEE. To the extent that the PCLL did not provide direct preparation for the CEE – as in some jurisdictions where there is a self-standing bar exam without any mandatory vocational course – an open market in “cramming” courses can involve additional financial pressure on individual candidates.

Whether this model would increase the regulatory burden may involve a question of priorities. It would be possible, for example, for the regulator to decide to monitor only the self-standing CEE, and lighten regulation of other elements, such as the PCLL. It is the view of HKLS, for example, that it would not be necessary for external examiners to monitor course materials and classes each semester, but to move to an audit of PCLL provision on a 2-3 year cycle. As indicated above at 4.1.3, there are significant resource issues if the CEE is to test skills as well as knowledge.

A related approach would involve sharing the assessment load between the PCLL and a CEE. For example, the skills component might be provided by the PCLL assessments, with more knowledge-based components assessed in a separate CEE written examination. Both assessments could contribute to the qualification threshold in pre-determined percentages. The regulatory burden would then be split between at least some elements of the PCLL and the new CEE. Nevertheless, the providers might still need to assess the subjects covered in the CEE in order to confer their university awards.

A CEE at this point would not, however, address issues of inconsistency with the OLQE. It would, however, be possible to align the design of such a CEE with the OLQE, so that the OLQE measured the same things, but at a higher level; or assessed matters which are learned only during the training contract.<sup>53</sup>

Set a new self-standing CEE at the point of qualification

Placing a CEE at this point may seek to assess whether knowledge of the law acquired during the LLB/JD or PCLL remains current. Alternatively, it may seek to assess how a trainee will perform at the point of qualification. A CEE at this point could be linked with the OLQE, an option discussed further above at 4.2.3. If the CEE is a broad assessment, rather than, for example, focussed solely on high-risk issues, there are, as noted above, challenges in merging a CEE with the OLQE without also redesigning the OLQE. This is because of the differences between the topics and skills required in the PCLL and the Hong Kong training contract which are not tested in the OLQE.

Similar issues arise as for a CEE prior to entry into the training contract. Here, however, there might be pressure on the employer to pay for cramming courses and/or to give study leave to candidates. There is a risk for employers in taking on trainees who do not ultimately pass the CEE and become unable to qualify. Where a CEE can be taken *during* a training contract, there may be a need for the regulator to require employers to provide study leave.

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<sup>53</sup> This exercise has been carried out in England and Wales, where the outcomes of the Qualified Lawyers' Transfer Scheme (the OLQE equivalent) have been mapped against the outcomes of the LPC (the PCLL equivalent) (SRA 2011, 2012).



### 4.3 Number of attempts

Finally, a question to be determined in any discussion of assessment is the extent to which a candidate should be permitted to retake it. There are, again, two schools of thought. In some jurisdictions a limited number of attempts is permitted before a candidate is either terminated or obliged to re-take any mandatory courses again. This approach may be informed by fears of decreasing currency in knowledge over time, or thought of as a fairness to very weak candidates. In other cases it is a matter of principle that a candidate should be allowed to sit assessments as often as they choose to do so, resulting in candidates expending time and money in continually resitting assessments sometimes over very many years. It is likely that candidates who have taken multiple attempts to pass assessments are at a disadvantage in the employment market.

*Q 7 Are you in favour, in principle, of the adoption of a CEE?*

*If so, why?*

*If not, why?*

*Q 8 If a CEE is adopted, what should its primary purpose be?*

*Q 9 If a CEE is adopted, when should it be taken, and at what level?*

*Q 10 If a CEE is adopted, what should it assess? How should those things be assessed?*

*Q 11 If a CEE is adopted, what resource, monitoring and quality assurance issues arise?*

## 5 CONCLUDING COMMENTS

The question of a CEE for intending solicitors in Hong Kong involves exploration of a complex set of variables, and understanding the position of a range of stakeholders: clients, candidates and their families; providers; employers;

practitioners (barristers, legal executives and solicitors); employers; regulators. The research team invites all those who feel able to contribute to do so.

*Q 12 Do you have any other suggestions or comments that should be taken into account?*

## APPENDIX I THREE ROUTES TO QUALIFICATION

HK visiting student	QLD/as internal	Other degree/qualification	recognised (Hong Kong Conversion Course)	law	Overseas lawyer route (OLQE)
<b>Contract</b>		Subjects must be studied as part of			Head V Principles of common law
<b>Tort</b>		initial	recognised	law	(candidates from non-common law jurisdictions)
<b>Constitutional law</b>		degree/qualification			
<b>Criminal law</b>					Head I – conveyancing
<b>Land law</b>					
<b>Equity</b>					
<b>Civil Procedure</b>		PCLL Conversion examination if required			Head II – civil and criminal procedure
<b>Criminal Procedure</b>		PCLL Conversion examination if required			
<b>Evidence</b>		PCLL Conversion examination if required			
<b>Business Associations</b>		PCLL Conversion examination if required			Head III – commercial and company law
<b>Commercial law</b>		PCLL Conversion examination if required			
		Hong Kong constitutional law (as top up in PCLL conversion examination)			Proposed: Head VI – Hong Kong Constitutional Law
		Hong Kong land law (as top up in PCLL conversion examination)			Head I – conveyancing
		Hong Kong legal system (as top up in PCLL conversion examination)			
<b>PCLL</b>					
<b>80% skills, 20% substantive law</b>					
		<b>Problem solving</b>			Some elements of problem solving are given as outcomes for specific heads (e.g. Head I, Head IV)
		<b>Applied legal research</b>			
		<b>Communication</b>			Some drafting is stated as an outcome for Head II and Head III
		<b>Fact investigation and analysis</b>			
		<b>Advocacy</b>			
		<b>Litigation management and strategies</b>			Implicit in Head II
		<b>ADR</b>			Head II (not assessed as a skill)
		<b>Negotiation</b>			Head II (not assessed as a skill)
		<b>Legal analysis</b>			Implicit
		<b>Organisation and management of legal work</b>			
		<b>Ethics</b>			Head IV – accounts and professional conduct
<b>Compulsory topics:</b>					
		<b>Property law practice</b>			Head I – conveyancing
		<b>Wills and estate management</b>			
		<b>Criminal litigation practice (including advocacy)</b>			Head II – civil and criminal procedure
		<b>Civil litigation practice (including advocacy)</b>			
		<b>Commercial and corporate law practice</b>			Head III – commercial and company law
<b>Pervasive:</b>					
		<b>Advocacy</b>			
		<b>Professional conduct (including e.g. client care and professional self-development)</b>			Head IV – accounts and professional conduct
		<b>Trust and office accounts and financial management</b>			
		<b>Client care</b>			
		<b>Revenue practice</b>			
<b>Electives including:</b>					
		<b>Advanced litigation</b>			
		<b>Family law</b>			
		<b>Corporate finance</b>			
		<b>China law transactions (in Chinese)</b>			
		<b>Environmental law</b>			
		<b>Administrative/public law</b>			
		<b>Banking</b>			
		<b>Intellectual property</b>			

HK visiting student	QLD/as internal degree/qualification	Other degree/qualification (Conversion Course)	recognised (Hong Kong law)	Overseas lawyer route (OLQE)
<b>Training contract (guidelines)</b>				
<ul style="list-style-type: none"> <li>• Principles of professional conduct</li> <li>• Communication</li> <li>• Practice support</li> <li>• Legal research</li> <li>• Drafting</li> <li>• Interviewing</li> <li>• Negotiation</li> <li>• advocacy</li> </ul>				<p>Common law country – 2 years' post admission experience</p> <p>Non common law - 5 years' experience of practice in home jurisdiction</p> <p>Possible exemption from individual heads with 5 years' experience (including in-house and pre-qualification: proposed).</p>
<b>At least three of:</b>				
<ul style="list-style-type: none"> <li>• Banking</li> <li>• Civil litigation</li> <li>• Commercial</li> <li>• Company</li> <li>• Criminal litigation</li> <li>• Family</li> <li>• Insolvency</li> <li>• Intellectual property</li> <li>• Property</li> <li>• Trusts, wills and probate</li> </ul>				

## APPENDIX II THE PCLL MODELS AVAILABLE IN HONG KONG

This table has been generated from examination of publicly available information. It is, therefore, a simplification. In particular it may not clearly show the placing of subjects and skills taught pervasively or embedded into other subjects.

	University of Hong Kong	City University of Hong Kong	Chinese University of Hong Kong
<b>Mode of delivery</b>	Full and part-time	Full time (part-time is suspended for the 2013 cohort and final part-time cohort in 2014-2015)	Full-time
<b>Fees</b>	Full time: Government-funded: HK\$42,100* (HK\$135,000* for 'non-local' students)  Self-funded: HK\$126,000  Part-time: HK\$147,000 (2013/2014)	Government-funded: HK\$42,100 (HK\$100,000 for non-local students)  Self-funded: HK\$4,030 per credit (2012/2013)	Government-funded: HK\$42,100* (HK\$100,000* for 'non-local' students)  Self-funded: HK\$138,600 [2013-2014 subject to approval]
<b>Compulsory subjects</b>	<b>4 core subjects</b>	<b>12 core subjects</b>	<b>5 core subjects</b>
• <b>Property law practice</b>	Property Transactions I	Conveyancing practice	Property and Probate Practice
• <b>Wills and estate management</b>		Wills and Probate practice	
• <b>Criminal litigation practice (including advocacy)</b>	Criminal Litigation	Litigation Writing and Drafting Criminal Litigation Practice	Criminal Litigation Practice
• <b>Civil litigation practice (including advocacy)</b>	Civil Litigation	Litigation Writing and Drafting Civil Litigation Practice	Civil Litigation Practice
• <b>Commercial and corporate law practice</b>	Corporate and Commercial Transactions I	Commercial Writing and Drafting Corporate and Commercial Practice	Commercial practice
<b>Pervasive subjects</b>			
• <b>Advocacy</b>		Interlocutory advocacy and interviewing Trial Advocacy Mediation and Negotiation	
• <b>Professional conduct (including e.g. client care and professional self-development)</b>	Professional Practice and Management	Professional Conduct and Practice	Professional Practice
• <b>Trust and office accounts and financial management</b>		Understanding Financial Statements and Solicitors' Accounts	
• <b>Client care</b>		Professional Conduct and Practice	
• <b>Revenue practice</b>	[pervasive]	[pervasive]	[pervasive]

	University of Hong Kong	City University of Hong Kong	Chinese University of Hong Kong
<b>Elective subjects</b>	<b>Three electives</b>	<b>Two electives</b>	<b>Five electives (* = mandatory for intending barristers)</b>
• <b>Advanced litigation</b>	Trial advocacy Personal injury litigation Property Litigation	Bar Course Personal Injuries Practice	Writing and drafting litigation documents* Trial Advocacy*
• <b>Family law</b>	Matrimonial Practice and Procedure	Family Law Practice	
• <b>Corporate finance</b>	Corporate and Commercial Transactions II Listed companies		Corporate Finance
• <b>China law transactions (in Chinese)</b>	China Practice Use of Chinese in Legal Practice Mediation in Chinese	Foundations in Mainland related Legal Transactions	Writing and Drafting Litigation Documents (in Chinese) China Practice Writing and Drafting Commercial Documents (in Chinese)
• <b>Environmental law</b>			
• <b>Administrative/public law</b>			
• <b>Banking</b>		Financial regulatory Practice	Lending and Finance
• <b>Intellectual property</b>	Commercial Dispute Resolution	International Arbitration practice	Alternative Dispute Resolution
	Property Transactions II Wills, trusts and estate planning		Writing and Drafting Commercial Documents
			Conference skills and opinion writing *

### APPENDIX III PCLL NUMBERS

Information kindly provided by HKLS or derived from information on the website of the Standing Committee on Legal Education and Training (2012).

The number of applications (italic) for admission to PCLL and the number of admissions (bold)	2008/09	2009/10	2010/11	2011/12	2012/13
<b>City University</b>	<i>437 (261 full-time, 176 part-time)</i>	<i>607 (379 full-time, 228 part-time)</i>	<b>435</b>	<b>520</b>	<b>700</b>
	<b>103 (79 full-time, 24 part-time)</b>	<b>126 (94 full-time, 32 part-time)</b>	<b>120</b>	<b>138</b>	<b>161</b>
<b>Chinese University</b>	<b>303</b>	<b>340</b>	<b>391</b>	<b>453</b>	<b>426</b>
	<b>76</b>	<b>101</b>	<b>145</b>	<b>150</b>	<b>150</b>
<b>Hong Kong University</b>	<b>270</b>	<b>504</b>	<b>622</b>	<b>673</b>	<b>970<sup>54</sup></b>
	<b>133 (133 full-time)</b>	<b>292 (246 full-time, 46 part-time)</b>	<b>275 (226 full-time, 49 part-time)</b>	<b>320 (240 full-time, 80 part-time)</b>	<b>322 (242 full-time, 80 part-time)</b>
<b>Total applications (some applicants may have applied to more than one provider or for more than one mode of study)</b>	<b>1010</b>	<b>1451</b>	<b>1448</b>	<b>1646</b>	<b>2096</b>
<b>Total admissions</b>	<b>312</b>	<b>519</b>	<b>540</b>	<b>608</b>	<b>633</b>

<sup>54</sup> Some applicants applied for both full-time and part-time courses.

## APPENDIX IV SUMMARIES OF LEGAL QUALIFICATION APPROACHES DESCRIBED IN THIS PAPER

There is some simplification in this table as, for example, some jurisdictions have separate routes for those wishing to become prosecutors. "LLB" includes equivalent JD programmes and GDL/PCLL-like graduate conversion courses. Where there are multiple professions, that closest to the role of a solicitor has been selected.

	Degree	Post degree common assessment	Mandatory vocational course <sup>55</sup>	Training contract/articles	Point of qualification common assessment
<b>Australia</b>					
<b>New South Wales</b>	LLB/Diploma		Practical legal training including approx. 4 months work experience.		Outcomes set
<b>Queensland</b>	LLB		Practical course or 1 year	Legal Training	Outcomes set
<b>Canada</b>					
<b>Ontario (current system)<sup>56</sup></b>	LLB		Licensing examinations 10 months articles Both to be completed within a 3 year period.		Outcomes set
<b>Chile</b>	LLB (5 years)			6 months	
<b>China</b>					
<b>Hong Kong SAR</b>	Qualifying law degree		PCLL	2 years (including RME course)	Outcomes set
<b>Mainland</b>	LLB	National Judicial Examination	JM	1 year	
<b>Denmark</b>	LLB and LLM			3 years (including 20 days in the classroom)	Advocacy test and written examination
<b>England and Wales</b>	LLB/exemption for CILEx/		Legal Practice Course	2 years (including Professional Skills Course)	Some outcomes set
<b>Germany</b>	LLB	First state examination	Some prescribed study during contract	formal training	Second state examination
			2 years		
<b>India</b>	LLB				All India Bar exam

<sup>55</sup> Does not include preparatory or "cramming" courses for bar examinations if participation in them is not mandatory.

<sup>56</sup> An alternative, involving a more integrated short vocational programme followed by a placement is being tested (Law Society of Upper Canada, 2012). It is intended to test cohorts of students pursuing both routes by the same final assessment.



	Degree	Post degree common assessment	Mandatory vocational course <sup>57</sup>	Training contract/articles	Point of qualification common assessment
<b>Republic of Ireland</b>	LLB //professional preliminary examination	Final examination	PPC I and II during training contract 2 years		
<b>Japan</b>	JD/preliminary examination	National Bar Examination	1 year Legal Training and Research Institute		
<b>Malaysia<sup>58</sup></b>	LLB	Certificate in Legal Practice examination		9 months	
<b>Mauritius</b>	LLB		Law Practitioners Vocational course	1 year	
<b>New Zealand</b>	LLB		Professional Course or	Legal Studies	Outcomes set
<b>Pakistan</b>	LLB			1 year	Admission test and judicial interview
<b>Peru</b>	LLB (5 years)				
<b>Philippines</b>	LLB (as postgraduate degree)				Philippine Bar Examination
<b>Scotland</b>	LLB		Diploma in Professional Legal Practice	2 years	Outcomes set
<b>Singapore<sup>59</sup></b>	LLB or Part A bar examinations		Preparatory course and Part B bar examinations 6 months		
<b>South Africa</b>	LLB (4 years)/5 years articles route		Short course + 2-5 years or Full time course + 1 year		Attorneys' Admission examination (may be taken during or after articles)

<sup>57</sup> Does not include preparatory or "cramming" courses for bar examinations if participation in them is not mandatory.

<sup>58</sup> See Malaysian Bar, 2012; n.d..

<sup>59</sup> See Ministry of Law, n.d.

	Degree	Post degree common assessment	Mandatory vocational course <sup>60</sup>	Training contract/articles	Point of qualification common assessment
<b>South Korea</b>					
<b>Old system</b>	LLB	Korean Bar examination	Judicial Research and Training Institute course (2 years)		
<b>New system</b>	JD				Korean Bar Examination
<b>Sri Lanka</b>	LLB /professional preliminary examination	Professional final examination	6 months		
<b>Taiwan</b>	LLB	Bar examination	Lawyers Training Institute (1 month)	5 months	
<b>Thailand</b>	LLB		1 month (assessed)	6 months (followed by exam)	
			or	1 year apprenticeship + examination	
<b>USA</b>	JD/alternative e.g. law office program				State bar examination
<b>Vietnam</b>	LLB (4-5 years)		Training course (6 months)	2 years	Bar Examination

<sup>60</sup> Does not include preparatory or "cramming" courses for bar examinations if participation in them is not mandatory.

## APPENDIX V SUMMARIES OF OTHER PROFESSIONAL QUALIFICATION STRUCTURES IN HONG KONG

Because this list is provided for comparison only, only entry routes for domestic graduate candidates are shown. There is some necessary simplification. Several professions provide a number of grades of membership, and a full or "member" grade has been chosen for the purposes of comparison.

		<b>Degree</b>	<b>Post degree common assessment</b>	<b>Mandatory vocational course</b>	<b>Practice period</b>	<b>Point of qualification common assessment</b>
Hong Kong Institute of Architects (2013)	Kong of	Degree	Academic Qualifying Assessment for graduates of non-recognised schools only		12-24 months practice experience	8 written papers <sup>61</sup> + professional interview
Hong Kong Institute of Certified Public Accountants (n.d.)	Kong of Public	Accountancy degree/non-accountancy degree + conversion programme/		Practical experience based on a competency framework 3-5 years 4 assessed modules studied in parallel		Final examination (2 written papers)
Hong Kong Chartered Secretaries (n.d.)	Kong of	Degree		Preparatory courses at HKU SPACE	3-6 years work experience (before, after or during study)	Qualifying Examination <sup>62</sup>
Dental Council of Hong Kong (2013) <sup>63</sup>	Kong	Dental degree/other qualification			4 years	Licensing examination (written and practical assessments) <sup>64</sup>
Hong Kong Institute of Engineers (n.d.)	Kong of	Degree/equivalent		CPD parallel with practice period	2-3 years pre-approved formal training + 1-2 years responsible experience Or 5 years general experience + 1 year's responsible experience	Professional assessment (report on practice period, portfolio of work, CPD record) + interview + essay test
Hong Kong Institute of Landscape Architects (n.d.)	Kong of	Accredited academic qualification			2 years	Professional practice examination (written test and oral test)

<sup>61</sup> Some of the papers may be taken after 12 months' experience.

<sup>62</sup> Graduates of specific masters degrees at City U, Open University of Hong Kong and Hong Kong Polytechnic University are exempt from the examination.

<sup>63</sup> A statement of competences for the degree and licensing examination stages is available (DCHK, 2009).

<sup>64</sup> Graduates of a specific HKU degree are exempt from the examination.

	<b>Degree</b>	<b>Post degree common assessment</b>	<b>Mandatory vocational course</b>	<b>Practice period</b>	<b>Point of qualification common assessment</b>	<b>of</b>
Medical Council of Hong Kong (2013)	5 years' medical training including internship	Licensing examination (knowledge, medical English and clinical) <sup>65</sup>		1 year Internship		
Hong Kong Institute of Planners (2011)	Degree/diploma			1 year	Qualifying Examination <sup>66</sup>	
Hong Kong Institute of Surveyors (n.d.; 2012)	Degree		Pre-qualification learning	structured 2 -3 years <sup>67</sup> (report on practice period and on structured learning)	Practical task + Assessment of Professional Competence interview	

<sup>65</sup> Graduates of HKU and Chinese U are exempt from the internship and licensing examination.

<sup>66</sup> Graduates of a specific HKU degree are exempt from the examination.

<sup>67</sup> A statement of core competencies is provided.

## APPENDIX VI RESEARCH TEAM

Jane Ching



Jane Ching is Professor of Professional Legal Education at Nottingham Law School, the law faculty of Nottingham Trent University in England. She is a co-director of its Centre for Legal Education. She is a solicitor and her PhD work was on the learning of early career litigation solicitors.

She has worked on projects in the UK for the Council for Licensed Conveyancers and Solicitors Regulation Authority. The latter involved a substantial project involving the testing of performance by portfolio at the point of qualification for intending solicitors (the "work-based learning pilot"). Jane was a member of the multi-institution research team working on the Legal Education and Training Review for England and Wales.

Jane was involved in the initial design for the training of local tutors for the Law Society of Hong Kong Risk Management Education programme. She has acted as an external advisor on a tenure application for one of the Hong Kong universities and supervises a Ph D student exploring professional legal education in Mainland China.

Pamela Henderson



Pamela Henderson is a senior lecturer at Nottingham Law School, teaching across a wide range of undergraduate, postgraduate and practitioner courses, including those for intending solicitors and trade mark attorneys. She is a solicitor and member of the Centre for Legal Education.

Pamela's main area of research interest is legal education, especially at the vocational and practitioner career stages. She participated in the work-based learning pilot. More recently, she was commissioned by the Solicitors Regulation Authority to undertake a comprehensive, research-based review of its CPD Framework for solicitors in England and Wales, which was published in 2012.

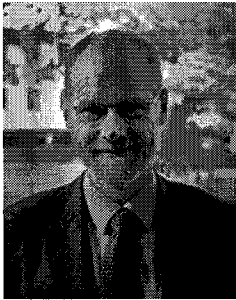
Jane Jarman



Jane Jarman is a reader at Nottingham Law School. She is a solicitor and a member of the Centre for Legal Education.

She is a specialist in curriculum design and development of qualification frameworks and courses for practising legal professionals. Jane designed the new vocational framework for trade mark attorneys in the United Kingdom in 2011. She has a special interest in insurance litigation, professional conduct, regulation and ethics, Solicitors' Accounts Rules issues and common breaches, risk management for solicitors, anti money laundering legislation and enforcement, regulation and compliance issues in England, Wales and Northern Ireland as well as in relation to the Law Society of Hong Kong Risk Management Education in Hong Kong.

Paul Maharg



Paul Maharg is Professor of Law in the College of Law, Australian National University, and is currently setting up a legal education centre in the College. He also holds a 0.2 post as Professor of Legal Education at Nottingham Law School.

Prior to this he was a Professor of Legal Education at Northumbria University School of Law and Professor of Law in the Glasgow Graduate School (GGSL), University of Strathclyde. There, he was Co-Director of Legal Practice Courses, and Director of the innovative Learning Technologies Development Unit at the GGSL, as well as Director of the two-year, JISC/UKCLE-funded project, SIMPLE (SIMULATED Professional Learning Environment – <http://simplecommunity.org>) and consultant to the JISC/HEA Simshare project (<http://www.simshare.org.uk>).

Paul was a member of the multi-institution research team working on the Legal Education and Training Review for England and Wales. He is a visiting professor at the University of Hong Kong.

Avrom Sherr



Avrom Sherr was Director of the Institute of Advanced Legal Studies from 2004 to 2012 and was Deputy Dean of the School of Advanced Legal Studies from 2011 to 2012. He joined the Institute in 1995 as the founding Woolf Professor of Legal Education, a research chair. Prior to joining the IALS, after teaching at the University of Warwick for 16 years, he was the first Alsop Wilkinson Professor of Law at the University of Liverpool and Director of the Centre for Business and Professional Law at Liverpool.

His main areas of interest have been the development of legal education, the sociology of the legal profession, ethics in professional work and the provision of legal services. He has also written in the area of freedom of protest, discrimination relating to AIDS/HIV and issues of welfare rights provision within health care. He was the principal architect of assessment of legal competence in the development of legal aid and legal services. Since 1989 he has been fully involved in taking forward the research concepts and refining them in an original approach. This has taken the legal profession forward into an assessment of the quality of their own legally aided work, ensuring the quality of legal services received by the public. Recent work has also included two projects looking at On-line Dispute Resolution.

He is the founding editor of the International Journal of the Legal Profession, was the project leader producing the seminal report "Willing Blindness" on regulation of the legal profession, and has coordinated a number of trans-European projects on legal ethics, money laundering, legal and accountancy practitioner defaults and discrimination. He was a member of the Legal Services Commission Quality Assurance Joint Working Group and of the Lord Chancellor's Advisory Committee on Legal Education and Conduct. He was Chair of the Advisory Board & Strategy Committee of UK Centre for Legal Education, and the Advisory Committee of the Office of the Independent Adjudicator for Higher Education. He is Chair of the Hamlyn Trust and the Advice Quality Standards Project Committee. His recent

work includes the Legal Education and Training Review funded by the Solicitors Regulation Authority, the Bar Standards Board and ILEX Professional Standards.

He has visited Hong Kong on a number of occasions and has spoken at each of the University Law Schools and to the profession. In 1991-1992, he received a British Council Grant to Review and Consult with Hong Kong University regarding teaching methodology in professional qualification courses.

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