

Panel on Administration of Justice and Legal Services of the Legislative Council

25 April 2016

Submission of the Faculty of Law, The University of Hong Kong (HKU)

1. The Faculty of Law, HKU, welcomes the invitation of the Panel to discuss the “Common Entrance Examination of The Law Society of Hong Kong” (CEE). As a major provider of legal education and training in Hong Kong, we appreciate this opportunity to be heard.

2. While the CEE was extensively aired in the previous meetings of the Panel on 16 December 2013 and 27 April 2015, the public announcement made by the Law Society of Hong Kong on 6 January 2016 (the Society’s announcement) in the midst of the comprehensive review commissioned by the Standing Committee on Legal Education and Training (SCLET) has raised various serious concerns.

3. Enclosed for the Panel’s reference are:

(i) extracts from our initial submissions to the SCLET review (Annex A) made before the Society’s announcement covering the CEE and related issues such as improving the PCLL Admission System and increasing government-funded places in the PCLL; and

(ii) extracts from our supplemental submissions to the SCLET review (Annex B) including our response to the Society’s announcement.

Initial Submissions  
of the  
Faculty of Law, The University of Hong Kong  
on the  
Consultation Paper of the Comprehensive Review of Legal Education and  
Training in Hong Kong,  
Standing Committee on Legal Education and Training

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**6. Specific Concerns Regarding the Law Programmes (Q10)**

***(a) PCLL admission***

- 6.1           The HKU PCLL has as its main sources of students local LLB, double-degree LLB and JD graduates, local graduates of external LLB and CPE programmes, as well as overseas returnees with qualifying law degrees from common law jurisdictions or UK GDL. We admit the largest number of students, currently having an annual target intake of 340 students (comprising of 260 full-time students and 80 part-time students), of which 117 full-time places are government-funded. We are the only provider for a regular part-time PCLL.
- 6.2           The number of applicants who designate our PCLL as their first preference always exceeds the number of places we offer. We adhere to the admissions benchmark set by the Law Society of Hong Kong. The same admissions policy applies to both full-time and part-time PCLLs. The selection is made primarily on academic merit. Specifically, we consider the average mark of all law subjects taken by the applicants. Allocation of government-funded places is also done on the basis of academic merit.
- 6.3           In the last two years:
- a) About 40% of the total PCLL places at HKU were given to non-HKU applicants. Two-thirds to 70% of the full-time intake held a HKU law degree (including JD). The proportion in the part-time programme was much lower, just about a quarter to 30%. The remaining places in the part-time PCLL are mainly filled by graduates with the London International LLB and Common Professional Examination operated by MMU/SPACE or UK providers, and from City University and Chinese University of Hong Kong.

- b) About three-quarters to 80% of the government-funded places are given to HKU graduates. The balance of places was shared among other categories of applicants, with UK LLB graduates having the largest share.

#### 6.4

Inability of law graduates becoming Hong Kong lawyers for not being given a PCLL place. There are two aspects to this issue. First, a concern that there are simply not enough PCLL places; and secondly, while the total number of PCLL places may be sufficient, the criteria for admission fail to capture deserving applicants.

- a) *Are there enough PCLL places?* This is not an easy question to answer definitively. Subject to the capacity and resources of the three PCLL providers, it is at least in theory possible to increase the number of self-financing PCLL places. However, there are at least two other concerns which will have to be addressed.
  - i) *How many additional PCLL graduates the job market can absorb?* The question of how many lawyers a particular jurisdiction needs depends on a number of factors. The lawyer-population ratio in Hong Kong was 1.16 per 1,000 in 2013, according to a study conducted by the Ministry of Law, Singapore<sup>1</sup>, which places it in between Singapore (0.83) and London (2.64) among the cities listed and compared. It is unclear if Hong Kong needs more lawyers. However, if it is thought to be unfortunate for someone to go all the way to complete an LLB and then be told that he or she cannot go further, it is even more unfortunate for another to complete not only an LLB, but also the PCLL and even vocational training, and then be told that there is no job to be had (see further 10.2 below).
  - ii) As the pool of PCLL students gets larger, the likelihood will increase that the average quality of students and the pass rate will be reduced. This will pose challenges to the PCLL providers on all fronts from admissions, facilitating students' learning and quality assurance.

Notwithstanding the difficulty of the exercise, the Faculty is prepared to enter into negotiations with all the stakeholders about the possibility of increasing the number of PCLL places.

- b) *"Deserving" applicants who slip through the cracks?* This will be further addressed below.

#### 6.5

Perception of unfair competition. We do not have any quota nor do we reserve any number of places for our own graduates who must compete along with other applicants for a place. We do not differentiate LLB and JD applicants from the

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<sup>1</sup> See <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/4th%20Committee%20Report.pdf>.

same local institution either, on the understanding that they are graded on more or less the same basis. On the other hand, the admissions process is not, and cannot be, an exact science yielding definitive answers, particularly when dealing with cross-institutional comparisons. In arriving at an admission decision, we take into account a number of factors:

- a) We rank among applicants from the same institution; we are considering asking for their ranking within their cohort.
- b) We keep track and consider the record of how graduates from different institutions perform at the PCLL. We may take into account, for example, the relative pass rates, when discussing marginal applicants for the last few places. In this regard, our general observations have been:
  - i) Overall, HKU law graduates generally do better than graduates from the UK and clearly out-perform graduates from other local institutions. They are at least comparable to Australian graduates in terms of first attempt pass rate and more often than the others finish the PCLL with an overall distinction. This may be explained by the fact that the quality of the student intake into both our LLB and JD programmes is extremely high, equaling, and perhaps even surpassing, that of some, if not all, of the top-tier law schools in England and Wales and Australia.
  - ii) The better the results in the law degree, the higher the chance of passing the PCLL at first attempt.
  - iii) The respective pass rates of HKU LLB, double degree and JD graduates (albeit the latter number is relatively small) at the PCLL are comparable to each other.
- c) All else being equal, and subject to academic merits being sufficient, we tend to follow the applicant's selection of preferences in deciding whether he/she gets a full-time or a part-time place.

In contrast, we have never had regard to the fact that an applicant has already procured a pupillage or traineeship; to do otherwise would give an unfair advantage to those who had done so before entry to the PCLL over the others. In any event, such offer of a pupillage or a training contract is no guarantee of success in the PCLL.

6.6 A 2:1 degree holder cannot gain admission to the PCLL. This constitutes just a tiny proportion of the pool of applicants. Some of them might have failed to pass all the conversion examinations required upon graduation of their law degrees while some might have missed the deadline of filing certain documents. For the rest, some applicants, particularly those from the UK, may have been screened out despite their Second Class (Upper Division) law degree because they may not have done well in their foundational courses in their first year of legal studies, the results of which are not counted at their overseas universities

towards the classification of their degrees while our primary focus is on the average of all law subjects taken over the entirety of an applicant's law degree. This has been made clear to prospective applicants through our external website, law fairs and public information sessions.

6.7 No second chance. Each year we have to turn away a significant number of applicants on the basis that their law average marks are just not competitive enough. These applicants can always re-apply. They are not prejudiced in any way by their previous rejections and their re-applications are considered afresh alongside the others in that particular year. In order to boost their chances, there are at least two alternatives for them.

- a) Pursuant to the discretion given to the Admissions Team as confirmed at the meeting of the Admissions Sub-committee of the PCLL Academic Board in March 2014, since 2014/15, 10 part-time places have been set aside for allocation based on a balance of the candidates' legal knowledge, legal work experience and interview performance. The Admissions Team first selects those among the unsuccessful candidates with relevant work experience for interview (15 interviews for 2014/15 and 32 for 2015/16). We have been tracking their performance, both in class and in examinations. Among the first group, all except one are now studying in their Year 2 although the first attempt pass rate was not on par with the other students admitted purely on the basis of academic merit. The existing data base, however, is too small to warrant any significant change in the short term.
- b) On the advice of our Admissions Team, some of those unsuccessful applicants sought the opportunity to 'redeem' themselves by taking another qualifying course, such as the GDL or the local CPE, before re-applying. In recent years, a number of them succeeded in improving their marks and were given a place.

6.8 Criteria adopted by the 3 PCLL providers in assessing graduates of overseas universities. It merits repeating that the task of admissions is not an exact science, nor do we think it should be. There is unlikely to be any substantial difference in the way overseas law degrees are assessed across the 3 providers, but there will inevitably be differences in detail. Again the weight given to "strength elsewhere" may also differ. We do not see this to be a problem. In fact a degree of diversity in admissions policy goes some way to ameliorate the problem of deserving applicants "slipping through the cracks" of a rigid criterion set in stone for all 3 providers. In any event, it also merits repeating that the PCLL Academic Boards have oversight over admissions policy, and if the profession detects any unacceptable differences, the matter would have already been raised there, but it has not. If, however, it is felt that the admissions process might benefit by a greater degree of uniformity, we are prepared to work with the other two PCLL providers, the legal profession, and other stakeholders, with a view to a common criterion for admission.

6.9 The varying admissions standards from year to year. Applicants need to compete among themselves for a limited number of PCLL places and the

competitors are bound to be different from one year to another. It follows that that the minimum standards required for admission will also change accordingly. The ‘cut-off’ point may also be affected by the apparently common phenomenon of “grade inflation”, which the PCLL admissions team has been monitoring closely, and which may have to be taken into account in assessing “merit”.

6.10 A few possible options to modify the admissions system. On the assumption that both the number of PCLL places and of law graduates wishing to obtain a place do not change appreciably, there will always be a significant number of law graduates who will not be able to practice. If it is thought to be desirable that a higher proportion of unsuccessful candidates (who will not get a place on the basis of LLB or JD grades alone) should nonetheless have a chance of gaining a place, a number of possibilities have been suggested to achieve that. Most of these options, however, require a host of details to be worked out, sometimes between several parties, and will almost certainly add pressure to the already tight timeframe for making all admission decisions without delay. None seems to offer a perfect solution. We just raise them in case the Consultants might wish to explore further.

- a) *Increasing the number of self-financing PCLL places at one or more of the three existing law schools in Hong Kong.* This has been discussed in paragraph 6.4 above.
- b) *The three law schools in Hong Kong, in consultation with the legal profession, working out and agreeing on a common set of criteria for admission to PCLL.* This has been discussed in paragraph 6.8 above.
- c) *Grading the Conversion Examinations.* Currently, the conversion examinations are marked on a pass or fail basis. Grading the conversion examinations and then using the results as a relevant admission factor may enable non-HK law students who did not do well in their LLB subjects to improve their grades sufficiently to gain admission. Details like the number of attempts which will be permitted and, if more than once, whether the highest or the average mark should be taken will need to be discussed. This is, however, outside the remit of the law schools and cannot be done without the support of the Conversion Examination Board.
- d) *Alternative PCLL entrance examination route.* This suggestion would carve out a certain proportion of PCLL places (say, 25%) for which candidates will compete for a place in a competitive entrance examination. The other 75% will follow the existing admission by academic merit. This will spare the majority of students the need to take the entrance examination (because of their academic merits), but allow the remaining students to compete in an entrance examination for the remaining places. Again, a number of details will need to be worked out, for example, the precise proportion of entrance examination places, whether or not the entrance examination will be standard for the 3 providers, whether there should be a short-list of applicants entitled to take the examination (and if so how many should be

on that list), when and where overseas students can take this, who pays for the cost of the exam, what if exam marks are appealed and to what extent performance in this exam may add to the overall academic merit.

- e) *Improving the existing HKU scheme of discretionary places (6.7a above).* One way of refining it is to gradually increase the number of discretionary places, and perhaps to introduce an aptitude test, written and/or oral, for all those shortlisted for an interview.

Despite all these practicalities and issues, the Faculty is very willing to enter into negotiations with the profession and other stakeholders to explore all possible and practicable avenues in the effort to improve the admissions system.

- 6.11 Dispel the unfounded rumours and misconceptions. To compete for the best law students from overseas, the Faculty will have to be more proactive in reaching out to various prospective groups. In addition, we need to dispel certain misconceptions and myths of applicants, their parents and the recruitment/training managers of the law firms by organizing presentations, information sessions, visits or even press interviews.

- 6.12 Demand for more government-funded places. In our view, this is more imminent. Since the reduction of the government-funded places from 170 to 117 and the prohibition of cross subsidies, we have had two groups of students separated according to their funding mode: government-funded and self-financing. The self-financing fee is set with reference to, inter alia, the actual staff cost involved and has been increasing over the years. On the other hand, the bursaries have been provided by way of a set off against part of the tuition fee to alleviate the financial burden on some of our self-financing students – most of them are indeed our LLB or double-degree LLB graduates with a 2:1 degree. The average number of applications in recent years is at least about 20. An increase in government-funded places to the HKU PCLL will help address the issue.

***(b) Differences in curriculum structure and content***

- 6.13 Although the three PCLL programmes are subject to the same set of benchmarks and expectations of the two professional bodies, there are bound to be differences in their approaches. In our view, such diversity in approach encourages healthier competition among the PCLL providers and gives better service to the profession and the students. The quality assurance mechanisms, in which representatives from the profession play a significant role, should be able to address any concern of such differences. The HKU experience has been that there has never been a situation when a serious concern with the quality of the PCLL has been raised in the Academic Board, or found to be incapable of being satisfactorily resolved.

***(c) Standards of the PCLL graduates***

- 6.14 The strongest evidence that the quality of our PCLL (and indeed all the three PCLL programmes) has not been a real concern to the profession is the long-standing and intimate involvement of the profession in the design, delivery, assessment and supervision of the programmes (see 7(b) below).
- 6.15 Assessment in the HKU PCLL. A formal open-book examination remains the norm. Some courses are examined by way of both formal examinations and continuous assessment. Students are informed of the assessment method of a course by the course co-ordinator, normally at the beginning of the course. Regarding the Core, students are required to pass all 8 assessments (13 components in total), 6 written and 2 oral.
- 6.16 All written assessments and suggested answers are vetted and commented on by the subject external examiners before the examinations take place. Involvement of the external examiners in marking follow the standard procedures. After internal marking by two internal examiners in each course, all failure and distinction scripts, together with scripts of just a borderline pass mark, will be sent to the external examiners for third marking. The external examiners will also be given a master mark sheet covering all students who have taken the examination. External examiners have the right of access to any other script for comparison and benchmarking purposes. Any divergence of views among the internal and the external examiners is normally resolved by open and frank discussion (and sometimes persuasion) before the marks are finalized and approved by the Board of Examiners, of which all external examiners are also members.
- 6.17 The HKU PCLL pass rate. The HKU PCLL pass rate at the first attempt has been on average above 80% over the past three years. It is our understanding that reputable Legal Practice Courses overseas regard this pass rate acceptable and normal. The pass rate after supplementary exams increases to on average above 95% over the same period. Annually the Board of Examiners award overall distinction to the top 10% of the cohort. The top five students in each of the last three years or so have been all HKU LLB or mixed degree (MD) LLB graduates.
- 6.18 The Chief External Examiner is invited to submit an annual comprehensive report, covering all key aspects of the PCLL, particularly on learning and assessment. They are all positive, with no particular concern raised by the Chief External Examiner.

*(d) Differences in the standards of graduates among the three PCLLs*

- 6.19 There are bound to be some differences in the approaches of the three PCLL providers, but with the establishment in 2003 of the SCLET, the oversight provided by this statutory body has ensured that any differences in standards will not be great.



- 6.20 Furthermore, although there exists no common examinations, the quality assurance mechanisms, particularly through the involvement of external examiners who are representatives from the profession, should again address any concerns of any such difference. The HKU experience has been that there has never been a situation when a serious concern with the quality of our PCLL students and graduates has been raised by the external examiners and/or the Academic Board, or found to be incapable of being satisfactorily resolved.
- 6.21 Possible option of a common assessment. This is different from the Common Entrance Examination proposed by the Law Society which will be dealt with in Part 8 below. This common examination (or assessment) may take a form of all assessments of a PCLL course, one examination paper (or assessment) of the course, or just a part of the examination (or assessment) to be agreed among the three law school and the professional bodies. It has been tried out before but failed. This does not mean that the issue cannot be re-visited. Our Faculty is willing to discuss this with the two other law schools and the profession if the Panel of Consultants considers it desirable.

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## **7. Adequacy of Existing Quality Assurance Mechanisms (Q11)**

- 7.1 There are in place a number of quality assurance mechanisms at several levels for all our qualifying law programmes. Our view is that, in combination, they have worked well. They provide, in our view, ample opportunity for close scrutiny of our programmes by external experts of international renown, and by all significant stakeholders in legal education in Hong Kong. While we are certainly not closed to the idea that these systems can be improved upon – and we shall be very happy to discuss this with the various stakeholders – we believe the existing system to be very satisfactory.

### ***(b) Additional mechanisms for PCLL***

- 7.5 The PCLL programme enjoys substantially the same quality assurance mechanisms as the other law programmes. It is part of the Faculty Review and the Student Evaluation Review. In order to increase the involvement of the profession and other external stakeholders in the PCLL mechanisms, the PCLL has additional measures.
- 7.6 Since the Roper-Redmond Report, the quality assurance system of the PCLL has been enhanced. The Government and the legal profession have been monitoring the PCLL and its standards very closely. This is carried out mainly by two bodies:

- (a) the SCLET; and

- (b) The PCLL Academic Board with three sub-committees overseeing admissions, curriculum and staff (full-time and part-time) employment respectively, in which 40% of its membership go to the profession, another 40% to the Faculty, and the remaining 20% shared by the Judiciary, the DoJ and lay members. The Chairperson is not a Faculty member.

In addition, the Law Society of Hong Kong sends their representatives to monitor the conduct of our classes from time to time.

- 7.7 We have two external examiners appointed by the profession for each of our cores and litigation-specific electives, one external examiners for transactional electives plus a Chief External Examiner nominated jointly by the two professional bodies. Their involvement in the assessment process has been explained above. The oral assessments of advocacy skills are largely conducted by members of the profession.
- 7.8 These mechanisms commonly exist in all the three PCLL providers. The HKU experience shows that the existing quality assurance mechanisms have been working and working reasonably well. We have not heard from our external members any concern raised so far but we are happy to discuss any feasible and reasonable suggestion from the profession to further enhance the system.

## **8. Proposal of a Common Entrance Examination ('CEE') (Q12)**

- 8.1 Most, if not all, of the issues surrounding the concerns articulated in the Consultation Paper and the CEE Proposal have in our view been comprehensively addressed in a "Joint Submission" from the three Law Faculties (and PCLL providers) to the Legislative Council Panel on Administration of Justice and Legal Services (9 Dec 2013, LC Paper No CB(4)234/13-14(01)).<sup>2</sup> The Faculty has no reason to depart from its position that the current PCLL system has worked well, and that improvements are best worked out within the current structures. The Faculty believes that the proposed CEE, whether it is to be in replacement of, in addition, or as an alternative to the PCLL will not solve any genuine concerns, but is likely to create fresh problems of its own.
- 8.2 CEE, in addition to the PCLL: This version is perhaps the easiest to respond to. This suggestion would add another step to the path to qualifying as a legal practitioner. On top of the PCLL, another examination – the CEE – will, it appears, be required. We do not understand what this version of the CEE would be testing for which cannot be done in the PCLL. It certainly will not address any real or perceived "bottleneck" concerns. If it is thought that it is unduly difficult to qualify as a practitioner, then this version of the CEE only makes

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<sup>2</sup> <http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1216cb4-234-1-e.pdf>.

matters worse, as presumably some would fail the test. Nor will it address any of the apparent concerns about the PCLL as it will still be there.

8.3 CEE, as an alternative to PCLL: This version of the CEE is actually inconsistent with its label – if the CEE is to be an alternative to the PCLL, it is no longer a “common” entrance examination. Presumably, this version of the proposal will have law graduates choosing between a PCLL route and the alternative CEE route. It is not clear what the shape of the alternative CEE is to be. It follows that as it is an alternative to the PCLL, then it ought to serve a similar function as the PCLL – ie to provide the necessary training to law graduates to bridge academic and practitioner legal education. [If, however, it is conceived to be merely an essentially self-studied examination, then it is not sensible that those who choose the PCLL have to undergo extensive training, but those who opt for the CEE only have to pass an examination.] In effect, the alternative CEE becomes yet another PCLL-type provider. We cannot understand how the apparent concerns with the existing 3 PCLL providers can be addressed by creating yet another PCLL-type provider. It seems to us much more rational for the profession and other stakeholders to engage the 3 PCLL providers in discussion about how to improve the existing programmes. Indeed this is something which ought to happen, and which in fact does already happen, at the Academic Boards and the Standing Committee on Legal Education and Training.

8.4 CEE, in substitution of the PCLL: This is, by far, the most radical version. We have expressed our belief that we now have a system which works well. Substantial changes such as this require sound argument and evidence that it will produce a system which is significantly better than what we have now. We see neither argument nor evidence forthcoming. Again, it is unclear what the shape this “exclusive” CEE is going to take. There are at least two possibilities:

- a) CEE takes over the functions of the PCLL: This means that the CEE will need to perform essentially the same functions as the 3 PCLL programmes. This means that the CEE will become a sole mega-PCLL provider. It certainly will not solve either the “bottleneck” concerns or any of the admission problems articulated. It can perhaps be predicted that it will bring a certain uniformity to the PCLL programme. If such uniformity is desirable, the “option of a common assessment” discussed in paragraph 6.21 above should already be able to achieve this, and a CEE would not be necessary. However, we have doubts as to whether this kind of uniformity is desirable and attractive. Within reason, the differences which exist between the three existing PCLL providers is an asset which ought to be preserved, as long as the quality of students admitted, and of the legal education provided, is not compromised (and it has never been so suggested). Within reason, different admissions policies help to prevent deserving applicants from slipping through the cracks, and different course content and teaching methodology enables the providers to develop their own emphasis, style and specialisations that may respond to the different needs of different employers. This diversity can only be for the good of the Hong Kong legal

profession. To exchange that for the dead hand of a single monopolistic provider would, we believe, be a poor deal.

- b) CEE replaces the PCLL programmes with a set of examinations: This is the most dangerous suggestion of all. The existing PCLL programmes are not merely a set of examinations but primarily a tried and tested programme of learning and training in practitioner-oriented law designed to bridge the gap between university and practice. To replace them with examinations, either self-studied or with private coaching, will mean a new generation of lawyers who will not have had such training going on to vocational training. The qualifying law programmes (LLB or JD) will then be under pressure to greatly increase the skills training component, to the detriment of both general liberal education and academic study of the law. There are other adverse consequences. The partial government funding for the PCLL programmes is likely to be lost, and those who want optional examination coaching sessions will have to pay dearly for it. Even more disturbingly, it is known that the experience of some neighbouring jurisdictions with such a CEE is that students are incentivised to take only the CEE seriously and strongly tempted to pay rather less attention to any other stage of their legal education, especially the underlying law degree programme. This version of the CEE proposal will have us exchange a careful scrutiny of how well the student performed over 3-5 years of legal education (which the PCLL admissions process does) and the year long full time training of the PCLL for performance in a single set of examinations taken over a few days. This cannot be for the good of the legal profession or the society at large.

8.5           The Faculty may wish to make additional submissions on Question 12 after meeting with the consultants.

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## **11. Conclusion**

11.1           It has been almost 15 years since the Roper and Redmond Report. It is timely to evaluate the situation. While the current legal education and training system, which features both a division of labour and partnership between gown and town, needs continual review, improvement and fine-tuning, we do not see any evidence that drastic change is required or desirable.

11.2           Building on the good working relationship with the legal profession and all other stakeholders which have been developed over the last decade or so during the PCLL curriculum reform (following the Roper and Redmond Report), we shall continue to do our best to maintain a constructive dialogue and active cooperation with the professional bodies under the existing framework and system, so that the necessary refinement and improvement can be made to encounter the challenges ahead.

Supplemental Submissions  
of the  
Faculty of Law, The University of Hong Kong  
on the  
Consultation Paper of the Comprehensive Review of Legal Education and Training in  
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## **1. Introduction**

1.1 .....

1.2 Notwithstanding the fact that the SCLET review is still on-going, the Law Society of Hong Kong announced on 6 January 2016 its Council's resolution to implement its own Common Entrance Examination (CEE), in addition to requiring the completion of the PCLL, for the purpose of entrance to the solicitors' profession (as trainee solicitors) no earlier than 2021. Appendix B contains our response to the announcement. The President of the Law Society clarified the statement with members on 11 January 2016, followed by another formal response from the Law Society on the same day. During the course of these events and after, the President shared his ideas on the CEE via the media. These supplemental submissions include, inter alia, our further thoughts on the CEE.

## **2. CEE**

2.1 We note the Law Society's power under rule 7 of the Trainee Solicitors Rules (Cap 159J) to set their own examination either in addition to or in lieu of the PCLL<sup>1</sup>. Historically, this took

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<sup>1</sup> Rule 7 of the Trainee Solicitors Rules (Cap. 159J) provides:

‘A person may only enter into a trainee solicitor contract if he –

- (a) has passed or received a certificate of completion or certificate of satisfactory completion as the case may be in –
  - (i) the Postgraduate Certificate in Laws and such other examination or course as the Society may require and set or approve; or
  - (ii) such other examination or course as the Society may require and set or approve; or
- (b) has been granted total exemption by the Society from the requirements in paragraph (a).’

the form of an additional examination on solicitors' accounting because this was not included in the PCLL training. But it has been decades since this Law Society examination ended because it became part of PCLL assessments. Thus far, the PCLL providers have extensively engaged both branches of the profession in the design, teaching and assessment of all courses in the programme.<sup>2</sup> There has not been any evidence of pedagogical concerns or gaps that call for the Law Society to exercise its power to set its own examination; nor does its announcement provide any justification for such a departure from existing practice.

- 2.2 If there is to be any major change to the training pre-requisites to entry to the solicitor branch of the profession, we believe the Standing Committee as the statutory body empowered to oversee legal education and training in Hong Kong is the best forum to consider all available options, which include but are not limited to the CEE. This is particularly so when expert Consultants have been commissioned by the Standing Committee to conduct such an exercise, which is still ongoing.
- 2.3 If the CEE is introduced to replace PCLL examinations, such that students will attend classes in PCLL but take the CEE in lieu of PCLL examinations,<sup>3</sup> we strongly believe it will be a retrograde step from the reforms made in connection with the Roper-Redmond report 15 years ago. An assessment that is administered without the context of a teaching programme that sets learning outcomes, matching learning activities and assessment methods can only serve screening but not educational purposes. It will create a serious disconnect between the study of the PCLL and the qualifying test for entry into the legal profession, if not hamper student commitment in the study of the PCLL and in effect render it redundant. As the Bar's Statement notes, there would be "legitimate concerns of its impact on the morale and standard of the PCLL courses". This will be a waste of valuable public funding currently available (within the PCLL framework) for the professional training of future lawyers, and is a counterproductive measure in improving the quality of the legal profession. Should the PCLL ultimately become redundant, whether in effect or in name, public funding may also shrink dramatically, as it will only be necessary for a much smaller number of students intending to join the Bar. This would represent a major shift from public to private funding of legal training, resulting in greater costs to be borne by students and the profession. Increased costs will unfairly disadvantage low-income students and introduce new barriers to entering the legal profession which are ultimately contrary to the public interest. In light of these compelling reasons, we strongly believe that the continuing existence of the PCLL provides better and more effective professional legal education and training to future lawyers in Hong Kong.

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<sup>2</sup> Sections 6(c) and 7(b) of the Faculty's Initial Submissions refer.

<sup>3</sup> This seems to be suggested in the penultimate sentence in paragraph 3 of the Law Society's announcement. In any event, the Law Society indicated, in the last sentence of the same paragraph, its intention to review the pre-requisites for the PCLL.

- 2.4 As a matter of fact, the PCLL regulations of the 3 providers stipulate that in order to complete the PCLL, a candidate is required, inter alia, to pass the exams set by the provider. We do not certify a student's completion of our PCLL without him or her passing all the PCLL exams. We hope that the Law Society would acknowledge and respect this requirement which currently exists in law. Section 2 of the Legal Practitioners Ordinance (Cap. 159) defines "Postgraduate Certificate in Laws" as a Postgraduate Certificate in Laws awarded by the three universities. It does not say awarded by the universities with the approval of the self-regulating professional bodies. Thus it is for universities alone to decide when a PCLL will be awarded.
- 2.5 Indeed, it is pedagogically unsound to have a course (such as the PCLL) without any form of assessment of its own, just as it is unsound to have an assessment without a proper course for it (as explained above). Furthermore, as the Hong Kong Bar Association has repeatedly indicated, most recently in its 8 January 2016 Statement, it will not administer its own examinations for admission to the Bar and will continue to rely on the PCLL for basic and general training and assessments for intending pupils.
- 2.6 If the scope of the CEE is substantially the same as that of the PCLL, there will be two sets of exams that may duplicate each other significantly, and lead to unnecessary burden, pressure and cost on the candidates. A clear and appropriate division of labour between the CEE and the PCLL might alleviate some of these problems.
- 2.7 A wide range of other options which may serve 'in substance' as a CEE exists. These include common exam question(s), common exam paper(s) and common exam subject(s) ('common' means common to all three existing PCLL programmes), to name but a few. To enable the Law Society to ensure that a common standard is required and achieved, the common question(s), the common paper(s) or all the assessments in the common subject(s), as the case may be, can be set and marked with greater (i.e. greater than the existing level of involvement) if not leading involvement of the representatives from the Law Society (and, where relevant, also the Bar) in the assessment process. The process can be further refined to ensure confidentiality (vis-a-vis not only students but also teachers in relevant courses) of the question(s), paper(s) or the assessments in the subject(s).
- 2.8 In the event of the Law Society insisting on the establishment of the CEE, we believe that much work can and should be done in working out the relationship between the CEE and the assessments which (as pointed out above) are required for the satisfactory completion of the PCLL as certified by the three existing law schools. In this regard, we have, in consultation with the law schools of the Chinese University of Hong Kong and the City University of Hong Kong, worked out a tentative model jointly proposed by the three law schools for consideration by the Consultants and the Law Society. The model, which may be referred to as 'Commonly Recognised Assessments', is set out in Appendix C. This model, and any variation of it, will

have to be subject to the approval of the three Universities. The whole matter is preferably to be resolved in conjunction with the Standing Committee.

- 2.9 The model proposed in Appendix C represents one of many possible alternative ideas for further consideration and may be modified and adapted for intending barristers on the basis of consultation with the Bar.
- 2.10 We shared our experience with the Bar at our meeting with the Consultants. Currently students are required to take 3 electives at the HKU PCLL, and the Bar prescribes Trial Advocacy plus at least one more litigation elective for intending pupils. The Law Society may consider doing something similar with existing courses or even a newly designed course, without the need to introduce a full scale CEE.
- 2.11 While we await to learn more about the details of the Law Society's proposal, we hope to discuss and work with all stakeholders. We hope the Law Society would reconsider its CEE proposal and refine or modify it so as to meet its intended purposes and help improve legal education and training in Hong Kong in the overall public interest.



# THE UNIVERSITY OF HONG KONG

## FACULTY OF LAW

香 港



大 學

法 律 學 院

### Appendix B

HKU Law responds to the Law Society of Hong Kong's proposed Common Entrance Examination

6 January 2016

We note the statement by the Law Society of Hong Kong on the Common Entrance Examination (CEE) issued on 6 January 2016. While the Law Society's proposal of a CEE has been debated in the community, no consensus has yet been reached amongst the stakeholders. In April 2015, the Standing Committee on Legal Education and Training, a statutory body chaired by Justice Patrick Chan, commissioned a panel of international consultants, headed by Justice K.H. Woo, to conduct a comprehensive review of legal education in Hong Kong, including the introduction of a CEE. This review began in October 2015 and remains ongoing.

Thus we are surprised that the Law Society has decided to proceed with the CEE while the comprehensive review is still ongoing. We believe the Standing Committee, in which all stakeholders are represented, is the best forum in which to discuss the topic of the CEE after the consultants have reported on their review.

The Postgraduate Certificate in Laws (PCLL) has been a responsibility of universities since 1972, and thousands of solicitors and barristers have been trained by the PCLL programmes. The PCLL was reviewed and enhanced after the last comprehensive review of legal education in 2000/2001. Thus we are pleased to see that the Law Society recognizes the importance of the PCLL and believes that it should remain a requirement to entering the legal profession. It is also well noted that the Law Society will not be setting any particular form of exam for the PCLL. While we note that the Law Society may periodically review the prerequisites for taking the CEE, we believe any relaxation that allows taking the CEE without the PCLL will have serious implications for the system of legal education and entry into the legal profession.

While the Law Society's statement states the purposes of the CEE, it does not provide justification for why the CEE is needed. We await to learn more about the reasons justifying the need for the CEE and the details of the proposal.

As always, we hope to discuss and work with all stakeholders, including the two professional bodies, in order to improve legal education and training in Hong Kong.

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## **Appendix C: A Possible Model of “Commonly Recognised Assessments”**

This proposed model is designed to enable the Law Society to require PCLL students to pass its Common Entrance Examination (CEE) before they can become trainee solicitors, while at the same time enabling each of the three law schools to administer its PCLL assessments and examinations under relevant university regulations for the purpose of certifying students’ completion of the PCLL, without however requiring students to sit for two separate sets of examinations on the same subject.

According to this proposed model, the Law Society will enter into an agreement (the “Agreement” defined below) with the three law schools under which a number of core PCLL subjects common to the PCLL programmes of the three law schools (hereinafter called “Designated PCLL Subjects”) will be designated as subjects to be examined by “Commonly Recognised Assessments” (as defined below).

“Commonly Recognised Assessments” (CRA) are assessments that are both (a) recognised by the Law Society as constituting its CEE; and (b) recognised by each of the three law schools as its own assessments in the Designated PCLL Subjects in its PCLL programme.

The three law schools and the Law Society will enter into an Agreement on the Administration of Commonly Recognised Assessments in Designated PCLL Subjects (hereafter called the “Agreement”). The Agreement will provide, inter alia, for the establishment of a “joint examination committee” (JEC), consisting of representatives of the Law Society and the three law schools.<sup>1</sup> The JEC will be responsible for the coordination among the Law Society and the three law schools in the joint setting of CRA examination question papers and their marking by internal and external examiners from the law schools and the Law Society. It will also ensure that each of the Designated PCLL Subjects in the three law schools has the same syllabus.

In order to complete the PCLL (and to be awarded the “certificate of completion or certificate of satisfactory completion” under rule 7(a)(i) of the Trainee Solicitors Rules (Cap. 159J)), the three law schools may prescribe their own additional requirements (i.e. additional to the CRA), including, for instance, the requirement that a PCLL student in any of the three law schools must satisfy the examiners in all internal PCLL assessments (i.e. those examinations, assessments and coursework administered by the relevant law school in a manner similar to the existing system (with the participation of external examiners from the professions but not as CRA) in subjects other than the Designated PCLL Subjects, including all elective subjects and subjects in which skills are assessed by continuous assessment).

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<sup>1</sup> The existing system of the Conversion Examination Board may be used as reference in this regard. Whether the Bar would participate in the JEC will be decided in consultation with the Bar.