An Impediment to Accord or a Springboard for Change?
The Proposal to Introduce a Common Qualifying Exam in Hong Kong

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Abstract

The Law Society of Hong Kong has issued a consultation paper soliciting views about the future of legal education in Hong Kong, including the possibility of introducing a common entrance exam to regulate entry into the legal profession. This consultation process has generated a great deal of debate throughout the profession about the desirability, or even the viability, of such an exam, and how it would fit into the current system of inculcating skills into law graduates in Hong Kong; namely, the Postgraduate Certificate of Laws Programme (‘PCLL’). Little headway has been achieved by the main stakeholders on this issue. This article will examine the merits of introducing a common entrance exam in Hong Kong, and how it may impact on the development of adequate skills by law graduates with particular reference to contemporary major reports that have been published in England and Wales and New Zealand, common law jurisdictions which employ similar modes of educational training for general entry into their legal professions. Finally, an alternate model of assessment for the PCLL will be canvassed which is similar in some respects to the current system used for those training for the Bar in England and Wales.

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I. Introduction

Hong Kong and New Zealand and England and Wales (ordinarily) expect those entering the profession to complete an academic stage of learning doctrinal law as well as a stage of practical learning skills (‘PLT’). In relation to the PLT stage, all of the assessments in Hong Kong and New Zealand are conducted by the individual providers; this is also the case in England and Wales, with the exception of some public type exams held by the Bar.

In 2012, the Law Society of Hong Kong (‘HKLS’) stated that it would explore the possibility of introducing a common entrance exam for solicitors (‘the CEE’) with a view to maintaining the standard of trainees who enter the profession. In doing so, ‘it would ensure a uniform standard and an equal chance to all eligible graduates to qualify as a solicitor.’ The rationale for the latter proposition is that many law graduates are unable to gain entry into the Postgraduate Certificate of Laws Programme in Hong Kong (‘PCLL’) and are thus, in general, denied admission to practise. The HKLS further stated it was still open as to whether the CEE would occur prior to the undertaking of the training contract or at its completion immediately prior to admission. Any final decision would occur after consultation with key stakeholders. This has led to a great deal of speculation in the Hong Kong legal and education community as to what may transpire. In particular, there was a fear that students might be able to undertake training contracts and be eligible for admission without having undertaken any practical

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1 In relation to Hong Kong, see the Trainee Solicitors Rules (Cap.159J), s 7(a) and Legal Practitioners Ordinance (Cap.159) (‘LPO’), s 4(1)(a) and LPO, s 27(1)(a) and (b) and Barristers (Qualifications for Admission and Pupillage) Rules (159AC), r 4(1)(a) and the Statement of Standing Committee on Legal Education and Training on New Entry Requirements for the Postgraduate Certificate in Laws, available at http://www.pcea.com.hk/. Concerning New Zealand, see http://www.nzcle.org.nz/. Information on England and Wales can be found at https://www.lawsociety.org.uk/ and http://www.barcouncil.org.uk/

2 See further below in section IIA.


4 Ibid.

5 Professor Lin Feng, Acting Dean, School of Law, City University of Hong Kong, Professor Christopher Gane, Dean, Faculty of Law, The Chinese University of Hong Kong and Professor Johannes Chan, Dean, Faculty of Law, The University of Hong Kong, ‘In Response to “Let the Market Decide Who Can be a Lawyer in Hong Kong, Not the PCLL” (Letter to Hong Kong Lawyer August 2013)’ (October 2013) Hong Kong Lawyer 14, available at http://www.hk-lawyer.org.

6 Ibid.
legal training, should they pass the CEE.7

Prior to a Legislative Council (‘LegCo’) Panel Meeting on 16 December 2013, the HKLS had not specifically ruled such a possibility out.8 Nonetheless, the HKLS’s stated position at LegCo on that occasion was that it was not their intention to replace the PCLL with a CEE and that their stance had been misrepresented in the media.9 As far as one can gather, and subject to the final report of the consultants commissioned by the HKLS, the HKLS’s preliminary position is that the CEE might operate as a quality control mechanism either post-PCLL or as some other form of adjunct to it. This need for a CEE arose from the variability in the nature of assessments between the different PCLL providers, although no specific details were provided by the HKLS.10 Support still remains in other quarters in Hong Kong for a CEE as an alternative to the PCLL to alleviate the perceived harshness of the PCLL admission system;11 so much so, it was stated that the matter would be listed for further discussion in the LegCo to hear from, amongst others, students who have been unable to get into the PCLL programme.12 A LegCo Panel was scheduled for some time between May and July 2015.13

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10 Ibid. Webcast between the 18.27 and 19.10 minute marks of the Panel.
Based on the latest comments of the Law Society as to their possible intentions, this article will canvass the desirability and need for and the efficacy of implementing a CEE, as an adjunct to the PCLL, rather than as a substitute. In doing so, it will examine the merits of such an approach and whether or not better alternatives exist to guarantee both the delivery of quality education and access to it, with particular reference to recent major reports that have been published in England and Wales and New Zealand which have dealt specifically with the desirability of implementing CEEs. The thrust of this article is centred on an examination of the basic skills, knowledge and values required of those seeking entry as legal professionals within the existing system of the PCLL. Therefore, this article will not explore the wider issue of a CEE being used as a mechanism to replace the PCLL in order to allow for the entry of greater student numbers.

II. Practical Legal Education in England and Wales

A. Centralised exams for barristers in England and Wales

In England and Wales, there is some centralisation of assessment in the training route for barristers, named the Bar Professional Training Course (‘the BPTC’). These changes followed from recommendations emanating from the ‘the Wood Report’ (a report of a working group chaired by Mr Derek Wood QC). The Wood Report was of the view that a centralised exam at the completion of the (then) Bar Vocational Course would ensure the attainment of proper standards at the point of exit. Even so, it should be limited to knowledge-based courses, as it would be ‘difficult’ to implement a centralised system for skills-based courses. Broadly speaking, this bifurcated assessment model has been adopted for Bar students in England and Wales since 2011-12. The body conducting these assessments is the Central Examination Board (‘the CEB’).

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16 Ibid, para 149.
17 Ibid, para 150.
18 See the Bar Standards Board, (note 14 above), p 2.
More specifically, the areas which are assessed by the CEB are Professional Ethics, Criminal Litigation, Evidence and Sentencing and Civil Litigation, Remedies and Evidence. This constitutes something of a minimalist approach to testing in relation to the overall curriculum of the BPTC, amounting to 25 percent of the subjects covered.20

An interesting feature of the CEB is that it is only the drafting of the papers which occurs outside of the remit of the providers. This is done by the CEB examiners who are wholly independent of the providers, which obviously helps ensure the integrity of the process21 (although the CEB examiners have prepared these after reviewing earlier papers used by these institutions).22 The CEB determines the syllabus and it appears principally up to the providers as to how they prepare students for this.

The assessment process is both a collaborative and a basic one. In this regard, the modes of assessments are either multiple choice questions (‘MCQs’) or short answer questions (‘SAQs’), reflecting presumably a desire for standardisation between the marks awarded by the different providers.23 The MCQs are marked by machinery in the BSB. The marking of the SAQs still occurs, by the providers, ‘in house’, so to speak. Random samples are scrutinised though by both the teaching institution’s external examiners and the CEB examiner.24

Theoretically, concerns relating to a possible non-alignment between the teaching methodology and the exams should be minimised in the CEB system because of the nature of the knowledge-based subject matter and the brevity of the questioning process. These centralised assessments still appear to be ‘a work in progress’, with reports of previous misunderstandings about the expected roles of the BPTC programmes and the CEB as well as the content of the examinable syllabus25 and continuing large and inexplicable failures in Professional Conduct and Practice (as compared to other courses tested).26

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21 Ibid, para 1.1
22 Ibid, para 2.1.
23 Ibid, para 1.2.
24 Ibid, paras 3.1-3.2
26 See The Bar Standards Board (note 20 above), para 17.1.
B. Legal education and training review

A major report was issued in June 2013 called the Legal Education and Training Review (‘the LETR’) which followed on from a sector wide review of legal education in England and Wales.\(^27\) In general, the LETR accepted that the current system of providing training in doctrinal law in a degree-based programme, coupled with skills training in a postgraduate component, worked well.\(^28\) Having said that, amongst discussion of a variety of suggested reforms, the LETR did pinpoint the importance of identifying the requisite competencies which must be achieved by those entering legal practice. These range from more rudimentary and fundamental notions that cover professionalism, practice standards and learning attainment through to meta-competencies that encompass more sophisticated skills such as reflection, dealing with uncertainty and emotional intelligence.\(^29\) In addition to providing these descriptors, the LETR felt it was essential to establish the performance standards to accompany these. Ultimately, this would translate into ensuring that lawyers entering the profession would possess the requisite skills and knowledge to carry out their expected tasks effectively, described as “day one competence” in the LETR.\(^30\)

In order to achieve this outcome, the LETR believed there must be a sufficient degree of standardisation of assessment and that a CEE provides an accurate and useful measure of the tasks and skills which are being assessed. In considering the value of introducing a centrally run assessment system, it was of the view that this type of model can provide assurance of standardisation and integrity but may lack validity in relation to practice and also might break the connection between training and assessment.\(^31\) A key difference between the situation in England and Wales and Hong Kong is that there are three providers of the PCLL in the HKSAR and around 30 institutions which have been authorised to provide the LPC in England and Wales.\(^32\) This obviously makes the difficulty of ensuring uniformity of standards between the different LPC providers more acute in the latter.

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28 Ibid, p IX.
29 Ibid, paras 4.3-4.17.
C. The Solicitors Regulation Authority’s views on the LETR and centralised exams

Following the publication of the LETR, the Solicitors Regulation Authority (‘SRA’) issued both a Policy Statement (‘the SRA Policy Statement’) and a Consultation Paper (‘the SRA December 2013 Consultation Paper’) relating to pre-admission training. The SRA Policy Statement, in pursuance of various stated goals such as diversity, access to the profession, cutting of unnecessary red-tape and adopting an outcomes-based learning model, contained some remarkably *laissez faire* musings about removing any stipulations relating to the content and structure of different qualifying stages or not recognising routes to admission. Ultimately, any potential apprehensions about maintaining standards were broadly dealt with by reference to adoption of exacting assessments (which might be centralised) in combination with the use of competency-based standards.

The December 2013 SRA Consultation Paper was somewhat different in tone and content, stating that it did not at that stage intend to change the current route to qualification, including abolition of the LPC requirement. Subsequently, in a press release dated 21 May 2014, the SRA basically limited change to the LPC to some changes to red tape and did not refer to the LETR’s suggestion of centralised assessment.

Then, in a further consultation paper dated 20 October 2014 (‘the 20 October 2014 SRA Consultation Paper’) the SRA sought views on its development of a ‘Competence Statement’ in relation to those qualifying and continuing to practise as solicitors. The SRA reverted to its original position

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35 See Solicitors Regulation Authority (note 33 above), p 13.

36 Solicitors Regulation Authority (note 34 above), p 1.


in the SRA policy statement whereby it opens up the possibility of a centralised system of assessment operating in place of formalised instruction.\textsuperscript{39} It did not actually provide any reasoning for this suggestion, stating only that: ‘We have substantial amounts of work to do to evaluate these options to identify the one which will best meet the aims of our review and is most consistent with our regulatory obligations.’\textsuperscript{40} Curiously, the 20 October 2014 SRA Consultation Paper did not solicit views at this stage on these potentially massive changes, merely stating that it will mark out its proposals in a further consultation around the end of 2015.\textsuperscript{41}

\section*{III. Practical Legal Education in New Zealand}

After a review conducted by the Council of Legal Education and the New Zealand Law Society in 1986, New Zealand law students have been required to undertake an approved Professional Legal Studies Course as one of the requirements for admission.\textsuperscript{42} The spectrum of Professional Legal Studies Course offerings are predominantly in on-line modes.\textsuperscript{43}

Aside from concerns about the sufficiency of the delivery of training in legal professional ethics,\textsuperscript{44} discourse on the merits or otherwise of the practical legal training had been fairly quiet until the publication by The Honourable APC Tipping of a review of practical legal training in New Zealand (‘the Tipping Report’) in August 2013.\textsuperscript{45}

\begin{footnotes}
\item[39] \textit{Ibid}, para 33(c).
\item[40] \textit{Ibid}, para 34.
\item[41] \textit{Ibid}.
\end{footnotes}
A key recommendation (for the purposes of this article) was the introduction of a common entrance examination.46 The main reasons advocated for the introduction of a New Zealand CEE were simply that the current system for assessment by the providers of PLT lacked sufficient rigour. In other words, because of consumer-based expectations of students, they were all being automatically allowed to pass.47 The Tipping Report considered that this change was preferable to any alternate system of external examiners, which it considered to be ineffective, costly and logistically burdensome.48 Aside from the evidence for this proposition being apparently rather anecdotal in nature, it is not clear from the Tipping Report exactly whether the exams or the marking are not sufficiently exacting or both. This is not to suggest that this point has no validity, but simply to canvass whether more detailed evidence should be gathered in relation to this area.

The Tipping Report advocated administering a three-hour exam that would test ability in three out of four topics.49 Arguably, though, it is difficult to ascertain what in the broad spectrum of PLT could be meaningfully assessed in one three-hour exam.

There has been little in the way of any public response to the Tipping Report, which might have shed further light here. The Twenty Third Report of the New Zealand Council of Legal Education did not explicitly refer to the Tipping Review’s suggestion for a CEE, only noting that ‘according to the consensus view of the submissions the Professional Legal Studies Course was providing an adequate and satisfactory transition between university and practice, in content and method of delivery, and the Course was evolving, reflecting the contemporary needs of trainees.’50 The Professional Legal Studies Course Accreditation Regulations 2006, without much fanfare and reflecting a generally satisfied view of the status quo, preserved those parts of the existing regulations that allowed for external assessment and moderation.51 Even more significantly, no provision has been made in these governing regulations for a common entrance exam. Finally, the Twenty Fourth Report of the New Zealand Council

48 Ibid, Terms of Reference 9 at para 9.4.
49 Ibid, Terms of Reference 9 at para 9.11(e).
of Legal Education settled the issue by very briefly stating it had decided not to introduce such an exam as it “raised feasibility issues for the Council.”

IV. Practical Legal Education in Hong Kong

In Hong Kong, law graduates are required to complete the PCLL or some other unspecified examination in order to undertake a training contract (the solicitors’ route) or the PCLL to undergo pupillage (the barristers’ route). The PCLL system is a relatively long-standing one, having been in place since 1972. Its purpose is to provide skills-based training for law graduates which will prepare them sufficiently for practice and give them a platform to learn further skills as they progress through the profession. After completion of the training contract and pupillage, trainee solicitors and barristers are entitled to admission as solicitors and barristers respectively.

Currently, there are three PCLL providers of this full-time programme, being the law schools at City University of Hong Kong (‘CityU’) the University of Hong Kong (‘HKU’) and the Chinese University of Hong Kong (‘CUHK’). The Law Society has established a set of benchmarks that require PCLL Programmes to offer a number of specified courses, either discretely or pervasively. The Law Society Benchmarks also requires students to undertake a number of electives in their PCLL but the providers have a fairly wide discretion as to what to offer. In addition, the Hong Kong Bar Association has stipulated that PCLL students must undertake a large number of specified skills-based tasks during their studies.

53 Trainee Solicitors Rules (Cap.159J), s 7(a) and LPO (Cap.159), s 4(1)(a).
54 LPO, s 27(1)(a) and (b) and Barristers (Qualifications for Admission and Pupillage) Rules (159AC), r 4(1)(a).
56 Ibid, p 2.
57 See the definition of ‘Postgraduate Certificate in Laws’ in the LPO, s 2.
58 The Law Society of Hong Kong, ‘Benchmarks for the PCLL (June 2007)’, p 4 (On file with the author).
V. Redmond Roper Report

Legal education in Hong Kong, including the PCLL, was subject to a comprehensive review known as the Redmond Roper Report.\textsuperscript{60} The Redmond Roper Report identified a number of perceived deficiencies in the operation of the PCLL, to the extent that its prime recommendation was that the PCLL should be abolished. In particular, from the perspective of a CEE:\textsuperscript{61}

- Substantive law occupied a large part of its curriculum, rather than more properly confining itself to skills-based courses, or to put it another way, those connected with lawyering.
- There was a lack of integration among courses in the programme so that skills were not taught in a systematic manner.
- The teaching and assessment methods were inadequate. In particular, there was a restriction on learners’ ability to engage in active rather than passive learning techniques.

The current situation concerning these issues is considered further below.

As a result of these and other perceived inadequacies in the PCLL programmes, the Redmond Roper Report suggested that the PCLL be replaced by a Legal Practice Course run by the Law Society through its Academy of Law. One attractive feature of this proposed change, from the perspective of those missing out, was that it would not be constrained in the number of places it could offer.\textsuperscript{62}

The Bar Association was of the view that reform of the PCLL was possible to bring it into line with modern legal educational best practices.\textsuperscript{63} It did believe though that there should be some separation of training for barristers and solicitors to enable barristers to receive sufficient training in their areas.\textsuperscript{64} The Law Society decided that it would reserve its position pending its review of the

\textsuperscript{60} Professor Paul Redmond and Christopher Roper, \textit{Legal Education and Training in Hong Kong: Preliminary Review. Report of the Consultants} (Steering Committee on the Review of Legal Education and Training, Hong Kong, August 2001).

\textsuperscript{61} \textit{Ibid}, para 8.1.3.

\textsuperscript{62} \textit{Ibid}.


\textsuperscript{64} \textit{Ibid}, para 25.
success or otherwise of the implementation of the Redmond Roper reforms.65

The authors of the Redmond Roper Report were highly pessimistic that adequate skills-based training could be achieved in the PCLL. Ultimately, of course, the PCLL was not abolished. Although there may have been real grounds for concern at the time, history has in fact demonstrated that reform was possible. All the curriculums of all the PCLL providers are now sufficiently skills oriented,66 and there is no empirical evidence to suggest the other earlier criticisms of a lack of coherence and inadequacy of teaching and assessment methods still apply.

VI. Assessment in the PCLL

Whereas the concerns about the rigour of skills-based training in the PCLL have long died out, the debate over assessment standards was recently reignited by the Law Society. The Consultation Paper has opined that ‘external regulation of the content and delivery of the PCLL is comparatively light,’67 but that is almost incontrovertibly far from the case.

More specifically, the external academic advisers of the Bar Association and the Law Society take a very ‘hands on approach’ in monitoring the quality and effectiveness of the PCLL.68 In particular, every academic year, the Law Society:

• Vets, through their external academic advisers (‘EAAs’) to the PCLL, all assessment scripts prior to them being undertaken and subsequently checks and reports on the marking of a sample of these completed assessments. These EAAs also attend Assessment Panel Meetings which formally sign off on all results.


66 ‘A Joint Submission from the Faculty of Law, The University of Hong Kong, the Faculty of Law, Chinese University of Hong Kong, and the School of Law, City University of Hong Kong to the Panel on Administration of Justice and Legal Services, the Legislative Council (9 December 2013)’, LC Paper No.CB(4) 234/13-14(01) (‘Joint Submission to LegCo by the Three Law Deans’), para 6, available at http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1216cb4-234-1-e.pdf.

67 See the HKLS Consultation Paper (note 8 above), para 3.5.3.

68 This information is either based on the various reports of the Law Society Annual Reports. Standing Committee on Standards and Development from 2007-2013, available at http://www.hklawsoc.org.hk/or the author’s direct knowledge.
• Is sent all course materials used in PCLL Programmes to vet.
• Sends EEAs to sit in on certain small group and large group classes and then reports on the quality of teaching in those classes.
• Distributes wide-ranging surveys to its trainee solicitors to evaluate the quality and effectiveness of the PCLL Programmes.\(^{69}\)

The Bar Association and the Law Society as well as interested groups such as the Department of Justice and the Judiciary sit on the PCLL Academic Boards for all the different PCLL Programmes. These PCLL Academic Boards were set up to review matters such as assessment standards, course design and curriculum matters.\(^{70}\)

Finally, the Standing Committee on Legal Education and Training, a body composed of relevant stakeholders, ‘reviews, evaluates and assesses’ the ‘academic requirements and standards for admissions’ in relation to the PCLL.\(^{71}\)

Although it is fair to say, as the Consultation Paper does, that the Law Society benchmarks are not especially exhaustive,\(^{72}\) the Benchmarks required by the Bar Association for the PCLL (most of which are also required to be undertaken by those seeking to be trainee solicitors) are very comprehensive, requiring students to be proficient in multiple, relevant practice-based competencies.\(^{73}\)

VII. Possible Future Plans for Hong Kong – a General CEE for PCLL Students

A. Opposition to a CEE by the Bar

The most practical and substantial obstacle blocking the introduction of a CEE is that the Special Committee on Legal Education of the Bar Association does not support the notion of a CEE for solicitors in Hong Kong. Nor does it support the introduction of such for barristers because it does not perceive that there are any problems with the general quality and standards of new entrants to the Bar or that there is any variation in the standards offered by the PCLL providers.

\(^{69}\) Ibid.


\(^{71}\) LPO, s 74A(2)(a)(ii).

\(^{72}\) The HKLS Consultation Paper (note 8 above) para 3.5.3.

\(^{73}\) Edward Chan SC et al (note 59 above) Annexure to these submissions.
Rather, it considered that the PCLL providers were generally responsive to requests for reform.\textsuperscript{74} In fact, the Special Committee on Legal Education of the Bar has gone so far as to say in December 2013 that 'the courses for the PCLL Programmes of the three universities have now been settled and the courses are running rather smoothly.'\textsuperscript{75}

Conversely, it foresees a number of problems inherent in a CEE in Hong Kong. Namely, the costs of operating it, difficulties in preserving the quality of training and delays it will bring to students in completing their studies. The Bar Association has also warned that a CEE may both attract more students to the Bar than would otherwise be the case and reduce the flexibility enjoyed by students in determining which branch of the profession to enter.\textsuperscript{76}

If the Law Society did decide to press ahead in the absence of any agreement with the Bar, then a two-track system prior to pupillage or starting a training contract would need to be developed in order to accommodate these differing requirements. It is not clear how such a system might work as no model has been put forward to provide any illumination on this point.

\section*{B. Difficulty in assessing skills on a mass scale}

Legitimate questions arise as to whether meaningful skills-based assessments in a standardised manner can be provided by persons with sufficient expertise across a wide range of practice areas for about 650 students on an annual basis.\textsuperscript{77} The Law Society itself has earlier stated that assessment should not just be a final year exam,\textsuperscript{78} but, ‘….assessment methods should also be used which test the ability to conduct transactions and intellectual and work management skills; that is, to properly reflect the emphasis on teaching lawyering skills (eg, current matter file simulations, performance exercises and skills-based assignments)’.\textsuperscript{79}

\begin{thebibliography}{99}
\bibitem{74} The Hong Kong Bar Association, ‘The Hong Kong Bar Association’s Views on the Proposed Common Entrance Exam’, Legco Panel on Administration of Justice and Legal Services, Meeting on 16 December 2013, paras 4, 5 and 11 respectively. This document was handed out at this Legco Panel Meeting but does not appear to have been published anywhere.
\bibitem{76} The Hong Kong Bar Association, (note 74 above), para 10.
\bibitem{77} This number is based on the figures for the number of candidates enrolled by the three PCLL providers in 2013/2014 as stated in The Standing Committee on Legal Education and Training, ‘Annual Report 2013’, p 40, available at http://www.sclet.gov.hk/eng/pdf/2013e.pdf.
\bibitem{78} The Law Society of Hong Kong (note 58 above), p 4.
\bibitem{79} \textit{Ibid}, p 5.
\end{thebibliography}
Any type of, even rudimentary, analysis (which remarkably has not been attempted to date) provides a clear sense of the extraordinary scale of this undertaking, were it to encompass all courses in the PCLL. For instance, and based on the experience of the CityU PCLL, conventional assessment of a skill such as interlocutory advocacy in Hong Kong would need over 30 assessors for a cohort of around 600 students. Leaving aside the difficulty of regularly finding sufficiently qualified and fair-minded persons (outside the cohort of those currently involved in the delivery of this course in PCLL Programmes) to conduct such an assessment, the challenges in achieving uniformity of grading would be equally immense. It is difficult to logically pinpoint exactly how many persons would need to be involved in the second marking process (as something of this magnitude has never been done in PLT); possibly, only a variety of attempts based on trial and error would lead to any clear and final conclusion as to what the most feasible system might be. If this logistical challenge is multiplied across a variety of other oral skills-based courses, the nature of the endeavour is mind-boggling.

C. Assessing of electives
As previously noted, the Law Society’s own Benchmarks mandates the offering of electives. However, any CEE could not realistically test a wide range of electives. This, of course, would run counter to greater opportunities for students to specialise. Only with a split system of assessment, whereby electives were tested in the PCLL Programmes and compulsory courses assessed in the CEE, could students be offered significant choice here. This type of system has the same drawbacks associated with testing skills on a large scale and also appears quite administratively unwieldy.

VIII. Introduction of a Hybrid Approach
A more feasible approach could be the introduction of a similar system to the Bar exam in England and Wales where students undergo a public examination in courses which are easier to assess on a larger scale. As far as achieving standardisation of marks amongst assessors is concerned, any CEE test will invariably need to consist of short answer questions, multiple choice questions or activities that are essentially not open to different interpretations. These assessments could logically encompass drafting of litigation documents (eg, pleadings and affidavits) and professional conduct. As has been seen from the BPTC, professional conduct can be examined by way of short answer questions, as this type of test examines students’ ability to apply rules and principles to
discrete situations. The basic curriculum and the relevant rules and procedures should be relatively straightforward to identify. \(^{80}\) Essentially, then, it should be possible to establish sufficient unanimity on what might be acceptable marking criteria or at least explore the possibility of doing so.

A note of caution should be added to the suggestion that the area of professional conduct should be included in a CEE. The teaching of legal ethics in an effective and comprehensive manner has traditionally been regarded as a core requirement of conventional systems of legal education in England and Wales and Australia. \(^{81}\) Therefore, it is vital that assessment by way of more streamlined criteria does not convert teaching of professional conduct into a box-ticking exercise. In Australia, the broader underpinnings of the nature of ethics and professionalism form a compulsory part of law degrees (‘the academic component of legal ethics’), while the more doctrinal and practical rules and regulations are dealt with in some jurisdictions there as part of the PLT. \(^{82}\) The Law Council of Australia recently invited submissions in a Consultation Paper as to whether the academic component of legal ethics might be dispensed with as a required course. \(^{83}\) Very little argument is advanced by the Law Council of Australia in its Consultation Paper for such a change beyond some basic observations that there are varying views on what should be a compulsory component of academic curriculums in Australian law schools and that legal ethics is not a mandatory requirement in the law degrees of a number of other common law countries. \(^{84}\) This proposal has, so far, been opposed by a number of respondents (mainly for the self-evident reason that it is vital for law students to achieve a deep and lasting understanding of these concepts), including the Council of Law Deans and former and past justices of the Supreme Court of NSW. \(^{85}\) Accordingly, addition of a compulsory course in legal professional ethics at the JD or LLB level in Hong Kong would be worthwhile considering as a necessary adjunct to the institution of any hybrid system.

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\(^{80}\) For an example of what these might encompass, see the Law Admissions Consultative Committee, ‘Practical Legal Training. Competency Standards for Entry Level Lawyers (January 2015)’, available at http://www.lawcouncil.asn.au/.


\(^{84}\) Ibid, pp 7-8.

\(^{85}\) Law Admissions Consultative Committee (note 83 above).
If such a hybrid approach is adopted, it would probably be better if it was marked by assessors independent of the providers, which would of course be different to the CEB system. Otherwise, such an approach would hardly differ from the existing system.

This model is theoretically viable, if the exams take place in lieu of the usual PCLL assessments. It is one of the proposed models for consideration in the HKLS Consultation Paper. For instance, instead of the students from CUHK, HKU and CityU sitting three separate PCLL assessments over the month of December, in, say a course called Professional Conduct and Practice, they could all sit one centralised exam on the same date and time. This exam would then be marked by external assessors. Such a model would have the benefit of ensuring that PCLL students did not experience any delays in obtaining their results and avoids duplication as compared to a system where students sit an additional exam after completion of the PCLL.

A. Potential advantages of a hybrid approach

First, if the marking was done by persons outside of the providers, it could simplify the prevailing, somewhat convoluted system of first and second markers and two EEAs, all marking a number of the same papers but with potentially differing and conflicting roles in the collective outcome of the final results.

Second, it would bring about greater alignment between the main stakeholders. Presently, there is no established procedure whereby the EEAs from the Bar and the Law Society determine assessment standards on a regular, collaborative and comprehensive basis. Rather, anecdotal evidence exists that currently consultation may occur separately and ad hoc between the providers and the different EEAs, and so, the interplay between all three on these matters may be more limited than desired. Instituting a CEE should bring about more detailed and ongoing dialogue about PCLL assessment between the Bar, the Law Society and all three providers to help ensure that all these organisations are working together in a seamless manner.

Third, it would presumably instil confidence in the Law Society about the integrity of the assessment system. This could allow the PCLL providers to concentrate more fully on providing novel ways of instruction rather than spending significant time in reaching an agreement with a range of different EEAs in the setting and marking of, at least, some exams.

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86 The HKLS Consultation Paper (note 8 above), p 28.
Fourth, a necessary pre-condition of having an examination on the drafting of litigation documents such as pleadings and affidavits would be the establishment of a consensus between educators and the examiners as to the requisite elements of best practice in this area. Therefore, this might bring about greater discussion within the profession and all the educators about the possible value of establishing greater commonality and consistency in the drafting of pleadings and affidavits.

Fifth, while not being in a position to get into a meticulous number crunching exercise, but based on the much grander scale of the operation of the Conversion Board Exams (the nature of which would be broadly analogous), the hybrid exams should not add too significantly to the costs of completing a PCLL. As to who might fund this change, the reality is that this burden would likely fall on the students. Of course, any addition to student debt is generally regarded as undesirable in international modern educational circles. However, hypothetically at least, the PCLL providers could be asked to accept a reduction in fees to help students bridge this gap, say, by an amount that would be commensurate with the savings these providers receive from having external markers take some of the workload from their teaching staff.

**B. Potential disadvantages of a hybrid approach**

First, it will probably limit the grading in a course to one assessment, rather than a combination of assessments. Having a combination of assessments in a course may be desirable as it should provide a more reliable test of students’ knowledge and potentially broaden the scope of the assessments.

Second, providers would have less discretion in how they offered instruction in litigation drafting. Currently, the Law Society Benchmarks allows this instruction to be offered pervasively. It might be that any providers teaching and assessing these skills pervasively (say, as part of a course like Civil Litigation Practice) might need to look at adjusting the make-up of their curriculum to ensure that what they teach accords more tightly with what is assessed. This again might stifle flexibility in curriculum design.

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AN IMPEDIMENT TO ACCORD OR A SPRINGBOARD FOR CHANGE?
THE PROPOSAL TO INTRODUCE
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Third, and paradoxically, problems may arise in attempting to achieve fairness. This is because, in all likelihood, the only fair system would be one whereby the examiner would be independent of all three providers. Otherwise, if the examiner was attached to one institution then his or her students may benefit, or the perception of such benefits might arise. Of course, course leaders from all the institutions might work collaboratively to set the exams, but this would increase the chances of leakage of information to students, even if inadvertently. A bifurcated system of this nature, might disturb the alignment between what is taught and what is examined, a basic educational requirement of acceptable teaching practice at tertiary level. It may be possible to correct this problem if there is sufficient consultation between the examiners and the providers, something that is obviously desirable, and perhaps that practice has not always been as meticulous as it could have been in the CEB.

Fourth, based on the United States experience with their bar exams, pressure may be exerted on PCLL providers to adopt the role of ‘crammers’ for CEE exams, a danger that is likely to increase as education becomes more customer focused and reliant on the results of students’ teaching evaluations to judge teaching performance.

Fifth, it would be necessary to ensure that sufficient, if not identical alignment, is achieved between what is taught by the three different providers, so as to ensure that no students at one institution are disadvantaged as far as the others are concerned when it comes to being prepared for the CEE. This could be achieved if there was sufficient liaison and cooperation between the relevant course leaders at the three institutions. Whether or not this type of pseudo-cloning might stifle flexibility and innovation within the different institutions in relation to course design is another matter.

90 John Biggs, Teaching for Quality Learning at University (Society for Research into Higher Education and Open University Press, Buckingham, 1999), p 213.
93 The HKLS Consultation Paper (note 8 above), p 28.
C. Moving ahead with the hybrid approach?

Whether or not, on balance, the advantages of a hybrid model are sufficiently valuable to merit this type is open to debate, but the question seems to be worth exploring. Unfortunately, the Law Society has not released the results of its Consultation Process, which closed around February 2014. As late as February 2015, the results were still being reviewed by the Law Society’s consultants with additional evaluation to follow of the data by the necessary Law Society Committees. Then, after completion of these processes, recommendations will be made to the Council of the Law Society. No timeline has been given as to when this information will be disseminated publically.94 Release of such information will, of course, offer valuable insight on this point and it is hoped that this data will be more openly available in the not too distant future.

IX. Conclusion

Valid concerns existed at the time of the Redmond Roper Report about the fundamental effectiveness of the PCLL in Hong Kong in preparing its students for practice. However, it is probably fair to say that much has been achieved to ensure that from day one, trainee solicitors and pupil barristers in Hong Kong start from a solid platform to carry out their duties. The Consultation Paper has stated that concerns have been raised about the ‘consistency of assessments and performance standards’,95 but the three Law Schools have not been provided, to date, with any evidence as to what these inconsistencies may be.96

Some overseas jurisdictions have commissioned reports exploring the efficacy of CEEs. In England and Wales, the LETR has expressed some conditional support for the notion of a CEE there in order to standardise assessments, but at the same recognised the pedagogical misalignments which could surface if it was implemented. Post the LETR, the views of the SRA have been something of a ‘moveable feast’ on the subject. In New Zealand, it seems clear that a CEE is not on the radar in the foreseeable future. Rather, a system resembling the Hong Kong model still exists.

94 Note 13 above, item 15, pp 6-7.
95 The HKLS Consultation Paper (note 8 above), para 2.2.
96 See Joint Submission to LegCo by the Three Law Deans (note 66 above), paras 15 and 16.
At this stage, it is not clear what findings will be made by those who have been commissioned by the Law Society to examine the final stages of pre-admission legal education in Hong Kong, nor even when and if such findings will be released. Therefore, it should go without saying that caution in general is needed in relation to any further change, lest the cure be worse than any perceived problem. It would be ironic, if after so much hard work between all the various stakeholders in reforming the PCLL to bring it into line with world’s best practice, that it no longer played a role in inculcating skills in the optimum way into those about to enter training contracts.

While it is inevitable that any system has room for improvement, there is currently no hard publically available evidence to suggest that the current PCLL offerings do not work well in delivering the required day-one outcomes. Certainly, there is no recent substantive scholarship which suggests that the current assessment system is not fit for purpose. Ultimately, it is probably best for a final decision on any changes to the PCLL model to be made after consideration by the forthcoming review by the Standing Committee on Legal Education. If, however, the appointment of full-time external academic advisers could operate as a starting point to identify and correct any supposed consistencies between the different providers as far as most courses are concerned.

On the other hand, it is unclear if this change alone would be sufficient to establish a satisfactory working relationship between the Law Society and the providers, who have adopted a very polarised position on the CEE, but yet are required to work closely together on matters relating to practical legal training. Such a fundamental and longstanding disagreement must militate against reaching a formula for ongoing and successful development of the PCLL. The continued silence from the Law Society about the results of its Consultation Process probably has not helped in reaching consensus in identifying and moving ahead with constructive change in this vital field; the history of this conflict presenting as something of a series of skirmishes that are producing no useful outcomes. Potentially, the introduction of a hybrid system of assessment may alleviate any lingering impressions that the Law Society has about the consistent application of assessment standards. The CEB, which has hybrid-like elements like the suggested prototype in this article, shows some promise as a model even taking into account its ‘growing pains’.

98 Joint Submission to LegCo by the Three Law Deans (note 66 above), para 23.
The forthcoming enquiry into the PCLL by the Standing Committee on Legal Education, presents a valuable opportunity to identify what areas of legal training are working well and those which may benefit from change, especially amidst current changes in the way that legal services are delivered in the globalised economy. Adopting a hybrid position, or at least a willingness to discuss it, could operate as a platform to allow the parties to work together in a productive and efficient manner in relation to assessment and the PCLL generally (as the two are inseparable) and avoid further confusion, mistrust, argument and delay in bringing about worthwhile reform.

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