

Overseas Lawyers Qualification Examination

HEAD II: CIVIL AND CRIMINAL PROCEDURE

Standards, Syllabus and Materials

A. CIVIL PROCEDURE

STANDARDS

Candidates will be expected:-

- (i) to be familiar with causes of action arising out of the contract and tort sections of Head V: Principles of Common Law;
- (ii) to demonstrate an ability to draft simple pleadings, affidavits and letters of advice; and
- (iii) to demonstrate a knowledge of and an ability to apply the rules of practice and procedure as set out in the syllabus.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

1. Structure of Hong Kong's Civil Courts System

- Court of Final Appeal
- Court of Appeal
- Court of First Instance of the High Court
- District Court
- jurisdiction of the courts, including supervisory jurisdiction
- sources of civil procedure: Ordinances, Rules of Court, Practice Directions

2. Pre-action Considerations

- the cause of action
- the parties to the action
- time limits
- the merits
- costs only proceedings
- financial considerations including legal aid

3. Underlying objectives of the High Court and District Court Rules

- the underlying objectives

- case management powers
- use of alternative dispute resolution procedures such as mediation

4. Commencement and Service of Proceedings

- types of originating process
- preparing and issuing originating process
- validity and renewal of writs
- modes of service
- acknowledgement of service and intention to defend
- applications to serve out of the jurisdiction

5. Pleadings and Particulars

- the function of pleadings
- Statement of Claim
- Defence
- Counterclaim and/or Set Off
- Reply to Defence and Defence to Counterclaim
- amendments to writ and pleadings
- Further and Better Particulars
- Third party proceedings

6. Interlocutory Matters

- striking out and staying
- security for costs
- interim payment
- judgment in default and summary judgment
- discovery and inspection of documents
- interrogatories
- exchange of witnesses' statements
- orders for exchanged statements to stand as evidence in chief at trial
- experts' reports
- joinder of parties
- contribution notices
- case management summons, case management conference and pre-trial review
- case management timetable

7. Pre-emptive remedies including:

- simple interlocutory injunctions
- prohibition orders

8. Preparations for Trial and Trial

- checklist for hearing
- setting down
- preparing and lodging documents for trial
- subpoenas
- conduct of the trial

9. Termination and Compromise

- without prejudice negotiations
- Calderbank offers
- sanctioned offers and sanctioned payments
- withdrawal and discontinuance
- simple settlement agreements
- consent orders and judgments

10. Enforcement of Judgments

- oral examination
- execution against goods
- charging orders
- injunctions and prohibition orders in aid of enforcement
- garnishee proceedings
- winding up and bankruptcy (N.B. in so far as this is relevant to the enforcement of judgments)

11. Costs

- bases and scales
- costs between litigants and between solicitor and client
- wasted costs
- security for costs
- taxed costs and fixed costs
- discretion of the Court
- costs on interlocutory applications
- summary assessment of costs

12. Rights of Appeal

- setting aside a judgment in default
- interlocutory appeals
- appealing a judgment
- appeals to the Court of Appeal
- appeals to the Court of Final Appeal (s.22 CFA Ordinance)

MATERIALS

A sound knowledge of the following Ordinances and other materials cited is essential to any understanding of civil procedure.

- Court of Final Appeal Ordinance (Cap 484)
- High Court Ordinance (Cap 4)
- Rules of the High Court
- District Court Ordinance (Cap 336)
- Rules of the District Court
- Practice Directions
- authorities

Hong Kong Texts on Civil Procedure

Candidates should note that although Hong Kong's civil procedure was modelled upon the civil procedure of England and Wales, procedural reforms in England and Wales have not been adopted in Hong Kong, but rather Hong Kong has implemented its own civil justice reforms. Reference must therefore be made to Hong Kong texts and materials.

Candidates should also note that Hong Kong Cases can be accessed through the Hong Kong Judiciary web site: <http://legalref.judiciary.hk/lrs/common/ju/judgment.jsp>.

Similarly, much useful Hong Kong material can be found on the Hong Kong Legal Information Institute web site: www.hklii.org.

Main Texts

- 'Hong Kong Civil Procedure 2020 - The Hong Kong White Book', Sweet & Maxwell, (ISBN 978 962 661 498 3)
- 'A Guide to Civil Procedure in Hong Kong', 6th Edition, LexisNexis, *Wilkinson, Cheung & Meggitt* (ISBN 978 988 838 996 4)
- 'Hong Kong Civil Court Practice', Desk Edition 2019, LexisNexis, *W S Clarke* (978 988 847 789 0)

The following materials are useful for reference:

- 'Hong Kong District Court Practice', 4th Edition, LexisNexis, *Lo, P.Y.* (ISBN 978 988 847 763 0)
- 'Civil Procedure in Hong Kong: A Guide to the Main Principles', 4th Edition (2017), Sweet & Maxwell, *Dave Lau* (ISBN 978 962 661 971 1)
- 'Civil Litigation in Hong Kong', 5th Edition (2017), Sweet & Maxwell, *Allan Leung & Douglas Clark* (ISBN 978 962 661 885 1)

Candidates must ensure they are using the latest editions of texts and up to date versions of Ordinances.

B. CRIMINAL PROCEDURE

STANDARDS

Candidates will be expected to demonstrate a knowledge of and an ability to apply the rules of practice and procedure as set out in the syllabus.

The test paper for this Head of the Examination is set at the standard expected of a newly qualified (day one) solicitor in Hong Kong who has completed a law degree (or its equivalent), the professional training course (PCLL) and a two year traineeship prior to admission.

SYLLABUS

- 1. Hong Kong's Criminal Courts**
 - Court of Final Appeal (in outline only)
 - Court of Appeal of the High Court
 - Court of First Instance of the High Court
 - District Court
 - The Magistrate's Court
 - The Juvenile Court

- 2. Criminal Procedure in Hong Kong**
 - The Role of the Judge
 - The Role of the Jury
 - Police Powers in Hong Kong
 - The Classification of Offences

- 3. Commencement of Proceedings**
 - Prosecuting authorities and the role of the Secretary for Justice
 - Arrest, Detention and Seizure of Property, Arrest and False Imprisonment
 - Questioning of suspects and obtaining statements
 - Receiving instructions to represent a client
 - Identification parades and attending the client in custody
 - Charging
 - Bailing
 - Proceeding by way of Summons
 - Service of Process and compelling attendance at court

- 4. From Charging to Trial**
 - Summonses, Charges and Indictments
 - Duplicity
 - Joinder of Offences and Offenders
 - Severance and Separate Trials
 - The Prosecution's Duty to Disclose Unused Materials
 - Alibi Notices and Expert Evidence

- 5. Procedure in the Magistrates' Court**
 - Applications for Bail
 - The Plea before the Magistrate
 - The Trial before the Magistrate
 - Amending Charges and Summonses, s 27 of the Magistrates Ordinance
 - Sentencing Powers
 - Transferring to and from the District Court
 - Committals to the Court of First Instance of the High Court

- 6. Procedure in the District Court**
 - From Transfer to Trial
 - Trial in the District Court
 - Sentencing Powers

- 7. Particular Problems During Trials**
 - Admissibility of Caution Statements: the Voir Dire and the Alternative Procedure
 - Objecting to the Information, Charge or Indictment
 - The Duty and Responsibility to the Court and to the Client
 - Vulnerable Witnesses and Video Linking and Pre-Trial Statements

- 8. Verdict and Sentencing**
 - Alternative verdicts
 - Aims and objectives of sentencing
 - Available sentences
 - Sentencing guidelines

- 9. Challenging and Appealing the Decision**
 - Appealing from Magistrates
 - The Review powers of Magistrates
 - Appealing from the District Court
 - Reviewing Sentence
 - Appeals generally

- 10. Costs and Finance**
 - Powers of Courts to Award Costs and Against Whom
 - Compensation Orders and Restitution Orders
 - Forfeiture Proceedings
 - Duty Lawyer Scheme
 - Legal Aid

MATERIALS

Candidates should note that although criminal procedure in Hong Kong is modelled upon the procedure in England and Wales, there are differences between the two procedures. Reference must be made to Hong Kong texts and materials.

The remarks about the Judiciary web site and the Hong Kong Legal Information Institute web site made in the civil procedure section of this syllabus are equally apposite to criminal procedure.

A sound knowledge of the following Ordinances and other materials cited is essential to any understanding of criminal procedure.

Ordinances and sub-legislations

- Criminal Procedure Ordinance, Cap. 221
 - Sub-legislation:
 - Criminal Appeal Rules, Cap. 221A
 - Indictment Rules, Cap. 221C
 - Legal Aid in Criminal Cases Rules, Cap. 221D
 - Criminal Procedure (Reference of Questions of Law) Rules, Cap. 221E
 - Criminal Procedure (Appeal Against Discharge) Rules, Cap. 221F
 - Criminal Procedure (Applications under Section 16) Rules, Cap. 221G
 - Criminal Procedure (Representation) Rules, Cap. 221H
 - Criminal Procedure (Record of Bail Proceedings), Cap. 221I
 - Live Television Link and Video Recorded Evidence, Cap. 221J
 - Application for Dismissal of Charges Contained in a Notice of Transfer, Cap. 221K
- Juvenile Offenders Ordinance, Cap. 226
- Magistrates Ordinance, Cap. 227
- District Court Ordinance, Cap. 336
- Costs in Criminal Cases Ordinance, Cap. 492
- Police Force Ordinance, Cap. 232
- Detention Centre Ordinance, Cap. 239
- Drug Addiction Treatment Centres Ordinance, Cap. 244
- Training Centres Ordinance, Cap. 280
- Probation of Offenders Ordinance, Cap. 298
- Community Service Orders Ordinance, Cap. 378
- Rehabilitation of Offenders Ordinance, Cap. 297

Other Materials

- The (Hong Kong) Rules and Directions for the Questioning of Suspects and the Taking of Statements (Hong Kong Government)
- Notice to Suspect for Attendance at Identification Parade (Pol. 60) Hong Kong Police Force
- The Bar Council, Code of Conduct of the Bar of Hong Kong Special Administrative Region (Hong Kong Bar Association)
- The Hong Kong Solicitors' Guide to Professional Conduct, The Law Society of Hong Kong (Paragraphs relating to the Conduct of Litigation)
- Practice Directions
- Solicitor's Practice Rules relating to criminal litigation, esp. Rule 5D

Texts

- *Knight, C. and Upham, A. R.*, 'Criminal Litigation in Hong Kong', 3rd Edition, Sweet & Maxwell Hong Kong (ISBN 978 962 661 421 1)
- *Amanda Whitfort*, 'Criminal Procedure in Hong Kong: A Guide for Students and Practitioners', 2nd Edition, LexisNexis (ISBN 978 988 8146 69 7)

For Reference

- 'Archbold Hong Kong 2020', Sweet & Maxwell Hong Kong (ISBN 978 962 661 527 0)
- *Cross, I.G. and Chung, P.W.S.* 'Sentencing in Hong Kong', 8th Edition, LexisNexis, (ISBN 978 988 847 667 1)

Candidates must ensure they are using the latest editions of texts and up to date versions of Ordinances.

RECOMMENDATION

Candidates may find it useful to spend half a day in the High Court, half a day in the District Court and half a day in the Magistrates' Court.

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