



THE
LAW SOCIETY
OF HONG KONG
香港律師會

THE LAW SOCIETY OF HONG KONG

Position on
LEGAL EDUCATION AND TRAINING

December 2008

Contents

Contents

| | |
|--|-----------|
| Preamble | 1 |
| Underlying principles | 2 |
| 1 The academic stage of legal education - the law degree | 4 |
| 1.1 Aim of the degree..... | 4 |
| 1.2 Entry to a qualifying law degree in Hong Kong | 5 |
| 1.3 Scope of a qualifying law degree in Hong Kong | 5 |
| 1.4 Assessment in the law degree | 7 |
| 1.5 Staffing of a law degree course..... | 7 |
| 1.6 Teaching and learning methods..... | 8 |
| 2 The first part of the vocational stage of legal education – the legal practice course (LPC) | 9 |
| 2.1 Aim of an LPC course..... | 9 |
| 2.2 Governance of an LPC course..... | 9 |
| 2.3 Entry to an LPC course..... | 9 |
| 2.4 Scope of an LPC course..... | 9 |
| 2.5 Staffing of an LPC course | 11 |
| 2.6 Assessment in an LPC course..... | 12 |
| 2.7 Teaching methods | 12 |
| 2.8 Delivery and duration of an LPC | 12 |
| 2.9 Monitoring of an LPC | 13 |
| 3 The second part of the vocational stage of legal education – the trainee solicitor contract | 14 |
| 3.1 Aim of a trainee solicitor contract..... | 14 |
| 3.2 Length and scope of a trainee solicitor contract | 14 |
| 3.3 Minimum salary..... | 14 |
| 3.4 Continuing professional development | 14 |
| 4 Language | 15 |
| 4.1 General principle..... | 15 |
| 4.2 Entry to the law degree | 15 |
| 4.3 During the law degree | 15 |
| 4.4 Entry to the LPC..... | 15 |
| 4.5 Entry to the trainee solicitor contract..... | 16 |
| 4.6 Active learning..... | 16 |
| 4.7 Chinese | 16 |

| | | |
|-----------|---|-----------|
| 5 | Continuing professional development | 17 |
| 5.1 | General principle..... | 17 |
| 5.2 | Aim of continuing professional development | 17 |
| 5.3 | Mandatory continuing professional development | 17 |
| 6 | Risk management education | 19 |
| 6.1 | Introduction..... | 19 |
| 6.2 | Aim..... | 19 |
| 6.3 | RME programme | 19 |
| 7 | Practice management training | 21 |
| 7.1 | General principle..... | 21 |
| 7.2 | Aim..... | 21 |
| 7.3 | Scope..... | 21 |
| 8 | Post LLB Training | 22 |
| 8.1 | Aim..... | 22 |
| 8.2 | Scope..... | 22 |
| 8.3 | Establishment funding | 22 |
| 9 | Academy of Law | 23 |
| 9.1 | Aim..... | 23 |
| 10 | Governance of the process of qualification for admission to practice | 24 |
| 10.1 | General | 24 |
| 10.2 | Powers..... | 24 |
| 10.3 | Composition | 25 |
| 10.4 | Public accountability | 25 |
| 11 | Training for legal executives | 26 |
| 11.1 | Aim of a legal executive course | 26 |
| 11.2 | Admission to a legal executive course | 26 |
| 11.3 | Scope of a legal executive course | 27 |
| 11.4 | Assessment in a legal executive course | 27 |
| 11.5 | Training and learning methods..... | 28 |
| 11.6 | Staffing of a legal executive course..... | 28 |
| 11.7 | Delivery of a legal executive course..... | 29 |
| 11.8 | Familiarity with Hong Kong practice..... | 29 |
| 11.9 | Continuing Professional Development | 29 |
| Appendix | Learning Outcomes..... | 30 |

Preamble

The quality of the services provided by solicitors to the community is, to a significant degree, the product of their legal education and training.

The Law Society, therefore, is vitally concerned to ensure that all those entering the profession have received legal education and training of the high standard necessary to ensure that Hong Kong solicitors are equipped to meet the needs of their clients, the profession and society, both now and well into this century.

This document contains the Law Society's position on legal education and training. It specifies the standards which the Law Society believes are appropriate for the various stages through which a person passes, both before and after admission to practice. These standards are the benchmarks against which the Law Society evaluates existing arrangements for legal education and training in Hong Kong, and against which it will evaluate future developments.

By publishing this policy the Law Society wishes to ensure that its position on these matters is clear, consistent and fair.

The document represents the Law Society's current position and will be subject to further review from time to time.

Underlying principles

The Law Society's policy on legal education and training is based on the following principles:

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

The Law Society's policy is that legal education and training must reflect:

- Hong Kong's commitment to the rule of law and promotion of justice;
- that the legal service industry in Hong Kong has a strong ethical foundation;
- that the legal profession plays an important role in serving the needs of the community;
- that the legal system in Hong Kong is a common law system;
- that Hong Kong has a special situation whereby, although English and Chinese are the official languages of the legal system, English remains the predominantly used language in legal practice, although it is to be expected that this will change;
- that Hong Kong is one of the major commercial and financial centres of the world; and
- that Hong Kong is commercially, and in other ways, a gateway both to mainland China and from China to the rest of the world.

As such, it is vital and essential that high standards be achieved by those engaged in all phases of the legal education and training process, so that the standards of legal service offered by Hong Kong solicitors are comparable to the world's best.

The aim of education and training is to produce lawyers who:

- uphold legal, professional and ethical values;
- can think through and solve problems;
- are knowledgeable in the law;
- have the necessary linguistic and communication skills;
- demonstrate an awareness of the importance of client care and risk management;
- take responsibility to continuously maintain, improve and broaden their own knowledge and skills to ensure that they can carry out their duties professionally and at the highest standards; and
- take responsibility in serving the needs of the community.

1 The academic stage of legal education – the law degree

1.1 Aim of the degree¹

A law degree which qualifies students to seek admission to practice in Hong Kong (a “qualifying law degree”) should enable students to acquire through study in depth of substantive areas of law, and by using primary sources² and the study of some subjects from the humanities, social sciences and sciences:

- (a) general transferable intellectual skills³;
- (b) knowledge and understanding of the general principles, nature, and development of law, and of the making and interpretation of common law and legislation⁴;
- (c) legal values, including a commitment to the rule of law, justice, fairness and high ethical standards;
- (d) knowledge and understanding of the contexts in which law operates;
- (e) knowledge and understanding of the role of the legal system in serving the needs of the community, thereby inculcating a sense of social responsibility; and
- (f) a knowledge and understanding of the legal system of China.

¹ These aims are an adaption of a statement of outcomes of a qualifying law degree in England and Wales as proposed in the *First Report on Legal Education and Training* published by the Lord Chancellor’s Advisory Committee on Legal Education and Conduct in April 1996.

² Cases and legislation

³ This includes: (i) the construction of logical argument; (ii) the capacity for abstract manipulation of complex ideas; (iii) the systematic management of complex factual information; (iv) intelligent, critical reading of texts; (v) the use of the English language and the Chinese language (where applicable) at all times with scrupulous care and integrity; (vi) the related ability to communicate orally and in writing in a clear, consistent and compelling way; and (vii) competence in retrieving, assessing, analysing and using texts and information, including information technology skills.

⁴ This includes: (i) the ability to handle judicial decisions through reading and analysis of cases; and (ii) the ability to handle Hong Kong SAR legislation through reading and analysis of statutory and other relevant materials.

1.2 Entry to a qualifying law degree in Hong Kong

Students should be accepted into a qualifying law degree at a Hong Kong university only if their academic qualifications are of a high standard, comparable to those required for entry to major law schools in other common law jurisdictions.

Generally, Hong Kong students should have attained not less than two Bs and one C in their A level examinations.

The Law Society acknowledges that the minimum entry standards for law degrees in Hong Kong are not within its control and are not always met. Nevertheless, the Law Society believes that its policy reflects a position which is highly desirable. The Society notes that in comparable common law countries where school leavers proceed direct to a law degree, such as Britain, New Zealand or Australia, a high standard in A level examinations, or their equivalent, is the norm. Nonetheless, the Law Society recognises that there may be some justifiable exceptions to this principle, for example, mature students, which may be catered for by special entry schemes.

All law students should be assessed at the end of the first year as to their capacity to continue with legal studies.

Law is not a postgraduate degree in Hong Kong. Nevertheless, studying law as a graduate has its benefits in that such students have already had a more broadened exposure to non-legal subjects through their undergraduate studies in other disciplines that will assist in their development of generally transferable intellectual skills.

The study of law in a number of jurisdictions like the United States and Canada therefore do require prior degree level study in another discipline. Some other jurisdictions, like Japan and Korea, have recently started establishing graduate level law schools.

There has also been an increasing offer of double law degree programmes both locally and overseas. These programmes aim to provide students with a broader liberal education as well as a stronger vocational preparation for a wider career choice in different disciplinary fields.

The Society will consider whether there will be benefits in offering law as a postgraduate degree and as part of a double degree and will keep in view its position on whether a qualifying law degree should be a postgraduate degree.

1.3 Scope of a qualifying law degree in Hong Kong

The LLB programme has been extended to a 4-year programme since 2004/05. The objective is to allow more time for the students to undertake some non-law electives in the LLB stage, thus broadening the students' horizon and scope of knowledge. The Law Society therefore expects that the law course would, thereby, more rigorously develop general transferable intellectual skills such as critical thinking and analysis, contextual analysis, problem solving, the development of arguments and solutions and clear and effective writing. It should also allow more emphasis to be placed on the development of research skills and enhanced English language skills.

The qualifying law degree must provide the intellectual foundation on which further knowledge, skills and experience can be assembled. The introduction of some subjects from the humanities, social sciences and sciences should be incorporated in the degree in order to allow students to gain a wider perspective of the context in which the law operates and to assist in the development of the generally transferable intellectual skills and competencies common to most university education in the humanities, social sciences and sciences⁵.

As a result of the 3+3+4 academic reforms that has been implemented in 2006/07, an issue arises as to whether the LLB programme is to be extended by one year from 4 to 5 years. On the basis that the new secondary school curriculum will be appropriately broadened to provide university entrants with a more holistic learning experience enabling them to develop increased competence in general transferable intellectual skills and that there will not be any resulting compromise to the content and scope of the LLB programme affecting its overall standard, the Society is inclined towards maintaining the status quo of a 4-year LLB.

However, as the considerations taken into account are based on projections and assumptions, the Law Society's position on the duration of the LLB programme under the 3+3+4 academic structure is tentative and subject to review from time to time.

The course of study requires, as a minimum, an understanding of the following areas of knowledge:

- Constitutional Law and Administrative Law
- Evidence and Procedure⁶
- Law of Contract
- Law of Torts
- Criminal Law
- Property Law
- Equity and Trusts
- Company Law
- Legal System of the People's Republic of China
- Commercial Law

in the context of an overall course of study which provides:

- a well-rounded education in law;
- a level of scholarship usually associated with a course leading to an undergraduate degree; and
- a good grounding in the research, analytical, communication and other skills required of a legal practitioner in modern society.

⁵ This policy is partly derived from the recommendations of the Report of the Consultants on "Legal Education and Training in Hong Kong: Preliminary Review", August 2001.

⁶ To encompass evidence and civil and criminal procedure, and to be taught as a whole subject

To the extent that practical legal skills will contribute to a better understanding of the core subjects, practical legal training should be brought into the LLB curriculum⁷.

1.4 Assessment in the law degree

In order to ensure suitably high standards, the assessment standards and methods used in the law degree should be applied rigorously.

The professional bodies must be satisfied that the examinations and other methods of assessment used during each year in the degree, in particular in the first year, rigorously assess whether each student is capable of proceeding on to the next year of the degree and finally being awarded the degree.

A student's participation in class should be part of the assessment scheme of each LLB subject and there should be a compulsory requirement for students to complete a substantial writing exercise as part of the assessment for at least one law subject⁸.

One of the criteria for assessment of all oral and written assessable work in the LLB degree should be English language ability appropriate to the work being assessed, and this criterion should be assessed rigorously, to the point where work could be failed on that basis alone⁹.

In seeking rigorous assessment standards, the Law Society expects that examiners must fail students who have not met appropriate levels of performance in examinations and other forms of assessments.

1.5 Staffing of a law degree course

Teachers in a law degree course should:

- have appropriate knowledge and understanding of the area/s of law being taught by them; and
- have the necessary teaching skills¹⁰.

A law degree course should have a ratio of teaching staff to students that facilitates individual instruction and feedback.

1.6 Teaching and learning methods

⁷ Probably a formula of 80% substantive law 20% skills

⁸ Derived from the Report of the Consultants on "Legal Education and Training in Hong Kong: Preliminary Review". The Society also endorses recommendations 64 to 73 of the Report on "Assessment".

⁹ Ibid.

¹⁰ Lecturers and tutors should be assessed periodically and evaluated by persons qualified to do so in order to ensure that they possess the necessary teaching skills.

The process of active learning in the teaching of law should include a strong and rigorous emphasis on the use of English.

The lecture and tutorial method should be discarded as the primary mode of instruction and should be used only exceptionally. Interactive teaching in medium sized class groups based on pre-assigned and pre-read material should become the norm of instruction, where the role of the teachers is primarily that of stimulators, facilitators and modellers of analytical, critical, creative and deep thinking¹¹.

Teaching methods should be more interactive and devised in such a way as to encourage students to become active learners, to contribute to critical analysis during tutorials, to undertake further research beyond the materials supplied to them, to enable them to think logically, critically and creatively and to have the capacity to evaluate and to analyse legal problems and issues¹².

The tertiary institutions should provide their teachers with adequate training and guidelines on the most appropriate, effective and up-to-date teaching methods and should be adequately funded with the resources to do so¹³.

¹¹ Derived from the Report of the Consultants on “Legal Education and Training in Hong Kong: Preliminary Review”.

¹² Derived in part from the Report of the Consultants on “Legal Education and Training in Hong Kong: Preliminary Review”.

¹³ Ibid. The Society also endorses recommendations 52 to 63 of the Report on “Teaching and learning methods”.

2 The first part of the vocational stage of legal education - the legal practice course (LPC)

2.1 Aim of an LPC course

The PCLL should be discontinued.

A legal practice course (LPC) should orientate students from their academic studies in the law degree to the actual practice of the law. It should thus:

- (a) prepare students for general practice by equipping them with the basic skills to perform with competence legal work in specified fields; and
- (b) provide students with a general foundation for subsequent practice by equipping them with basic skills to develop new competencies in response to employer and client needs.

2.2 Governance of an LPC course

The LPC should be conducted by a free-standing institution in its own premises established under the Legal Practitioners Ordinance, its own ordinance, as a company or in some other way, and governed by a board which would consist of all stakeholders in legal education (ie. the judiciary, government, the universities and the wider community) but with dominant representation by both branches of the profession on an equal basis. Ultimately, the LPC could be conducted by a proposed institute responsible for the provision and administration by the profession of qualifications and training for all lawyers post LLB¹⁴.

An establishment grant should be provided to set up premises for the course and to recruit the initial staff and to design and plan the course. The course should be supported by UGC funding to the fullest extent possible. Although the profession's own training body, the institution would be required to conduct its affairs in a transparent way.

2.3 Entry to an LPC course

Students should be accepted into an LPC course only if they have obtained:

- a qualifying law degree (not lower than a 2:2)¹⁵ from a university in Hong Kong;
- an equivalent law degree from an approved non-Hong Kong university; or

¹⁴ See Section 8.

¹⁵ If the Law Society is not satisfied that the institutions are awarding bona fide 2:2 degrees then the Society will revise its policy in this respect to require not less than a 2:1 degree.

- a non-law degree (not lower than a 2:2) from an approved university and passed the Common Professional Examination of England and Wales (CPE) or the Common Professional Examination of Hong Kong (CPEC).

There should be no numerical quotas for entry to an LPC. Entry should be based solely on academic merit and language ability.¹⁶

2.4 Scope of an LPC course

There should be more emphasis on the teaching of skills than the teaching of substantive law¹⁷. The curriculum should be based on a conceptual framework of how legal work is done rather than structured around subject areas of law. It should take the form of practical training in transactions and skills within a strong ethical context¹⁸.

The preferred option for the LPC is a common course for both branches of the profession but the Society would accept the option of a common core of instruction for both branches of the profession, but with electives provided. Included in those electives should be a course on dealing with transactions in Chinese law, to be conducted in Chinese.

Students should be able to develop basic competence in those intellectual and practical skills necessary to carry out the tasks in the areas of practice dealt with in the course, such as:

- problem solving
- communication - writing, drafting, advising, interviewing, counselling
- fact investigation and analysis
- litigation and alternative dispute resolution procedures
- negotiation
- practical legal research and analysis (including computer-aided)
- organisation and management of legal work (work and file management, office and personal management (including computer-aided))
- recognising and resolving ethical dilemmas and ethical formation
- intellectual skills

¹⁶ Derived from the Report of the Consultants on "Legal Education and Training in Hong Kong: Preliminary Review".

¹⁷ Probably a formula of 80% skills 20% substantive law.

¹⁸ Derived from the Report of the Consultants on "Legal Education and Training in Hong Kong: Preliminary Review".

The areas of practice to be studied in an LPC course shall embrace all or most of the following:

- conveyancing (including landlord & tenant) law and practice;
- wills, probate and administration;
- civil and criminal procedure;
- commercial law and practice¹⁹;
- advocacy;
- professional conduct and practice²⁰;
- accounts and financial management (including basic bookkeeping, profit and loss accounts and analysis of financial statements); and
- China law practice

2.5 Staffing of an LPC course

Teachers in an LPC course should:

- have an appropriate background and experience in the practice of law and the area/s of practice being taught²¹; and
- have the necessary teaching and other skills to teach knowledge and skills²².

An LPC course should have a ratio of teaching staff to students that facilitates individual instruction and regular feedback²³.

¹⁹ This includes company law.

²⁰ This subject should include: the nature of professionalism; the fiduciary obligations of professional lawyers to their clients; the rule of law; representing clients without fear or favour; equality of opportunity; provision of competent representation; striving to promote justice, fairness and morality; striving to improve the profession; professional self-development; and client services and care.

²¹ Teachers should have recent and relevant practical experience at the time of their appointment, but it is not necessary that such experience should have been gained in Hong Kong.

²² Teachers should be assessed periodically and evaluated by persons qualified to do so in order to ensure that they possess the necessary teaching skills.

²³ For small group/skills related teaching the ratio of teaching staff to students should not exceed 1:8.

The Law Society encourages practitioners, so far as they are able, to meet the requests of the LPC institution to assist in lecturing.

2.6 Assessment in an LPC course

Students should be assessed as to whether they “could do”²⁴.

In order to ensure suitably high standards, the assessment standards and methods used in an LPC course should be applied rigorously. In particular, the standard of work required for a pass should meet all of the aims and objectives of the course.

There should be no closed book examinations as this encourages rote learning. Other 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. Assessment should be continual, not only by way of a final open book examination.

2.7 Teaching methods

Emphasis should be placed on teaching methods which discourage memorising and rote learning and encourage active learning and independent and critical thinking. To this end, innovative teaching methods should be employed, including “learning-by-doing”²⁵.

2.8 Delivery and duration of an LPC

Provided that the scope of the LPC is covered, there can be flexibility in the way the course is undertaken eg by way of modularisation, or on a part-time basis, or by the inclusion of some distance learning approaches²⁶.

An LPC should be of at least 4 to 6 months in duration. The Society does not, at this stage, wish to be dogmatic about the duration of the LPC as this will depend upon the outcome of the detailed planning of the course. The course should be modularised, enabling students to undertake all of the course immediately prior to pupillage or the training contract, or spread throughout the vocational stage²⁷. An integrated training approach allowing the LPC and on-the-job training in the legal practice may be more effective and meaningful as the students have

²⁴ Derived from the Report of the Consultants on “Legal Education and Training in Hong Kong: Preliminary Review”.

²⁵ Derived in part from the Report of the Consultants on “Legal Education and Training in Hong Kong: Preliminary Review”.

²⁶ Ibid.

²⁷ Derived from the Report of the Consultants on “Legal Education and Training in Hong Kong: Preliminary Review”.

an opportunity to apply the skills learned (through textbooks, simulation and role play) in a real life legal practice under supervision. The LPC and on-the-job training complement each other to provide a holistic framework for students to develop and acquire practical skills that are relevant to a solicitor's practice.

2.9 Monitoring of an LPC

The LPC would be governed by a Board comprising all stakeholders in the provision of legal education in Hong Kong and would be responsible to that Board²⁸.

The role of the external examiner is vitally important in ensuring high standards through rigorous assessment. Examiners should scrutinise a greater sample of examination scripts than is currently scrutinised. Moreover, the Law Society expects that any external examiner will not verify a "pass" grade to students whose performance in the examinations and assessments indicates they have not achieved the prescribed standards, aims and objectives of the course.

It is acknowledged that external examiners do not have the time and manpower to exercise a closer and constant supervision of the courses. Therefore, in order to improve the supervision of an LPC course, in both the training and assessment programmes, it is proposed that two monitoring teams be created - one to monitor the training programmes and the other (a team of examiners) to scrutinise the examinations and assessments. A key element of the proposals is the appointment of a course monitor to assist in the supervision of the courses.

Any team of external examiners should comprise persons with suitable qualifications and who have sufficient time to scrutinise a greater sample of examination scripts over a short period.

²⁸

Ibid.

3 The second part of the vocational stage of legal education – the trainee solicitor contract

3.1 Aim of a trainee solicitor contract

The practical skills training provided through simulation and role play during the LPC should be reinforced under the trainee solicitor contract through properly supervised on-the-job training and experience in accordance with user-friendly standards, checklists and any other guidance set out by the Law Society²⁹. The trainee solicitor contract shall provide the trainee solicitor with the opportunity to gain experience in the basic skills and characteristics associated with the practice and profession of a solicitor of the High Court.

3.2 Length and scope of a trainee solicitor contract

The practical training offered during a trainee solicitor contract should be 2 years. The Society is conducting a review of the scope of the trainee solicitor contract with a view to formulating, for guidance purposes, a set of outcomes that a trainee solicitor is expected to be able to achieve upon completion of the training.

This outcome-based approach is considered beneficial to both principals and trainee solicitors in maintaining consistency in the standard of training and transparency of the training process.

3.3 Minimum salary

As at present, the Law Society will continue to prescribe a minimum salary to be paid to trainee solicitors. The charging of a premium by firms is not allowed.

3.4 Continuing professional development

A principal shall ensure that the trainee solicitor with whom he/she has entered into a trainee solicitor contract complies with rule 5 of the Continuing Professional Development Rules and rules 5 and 7 of the Legal Practitioners (Risk Management Education) Rules, shall give the trainee solicitor paid leave for such purposes, and shall pay the relevant course fees. The Law Society encourages principals to view these requirements as a minimum. Trainees should be encouraged to acquire in excess of the minimum CPD/RME requirements where possible.

²⁹ This policy is based on that of the Law Society of England and Wales.

4 Language

4.1 General principle

Because of Hong Kong's status as an international commercial and financial centre and the nature of the legal system and of legal work in Hong Kong, it is essential that all those undertaking legal education and training have a high standard of English, and it is desirable that those who have the capabilities are provided with opportunities to be trained to use Chinese to a high standard.

4.2 Entry to the law degree

Students should be accepted into a qualifying law degree only if they have obtained a minimum grade of C in the HKALE Use of English Examination, although the Law Society considers that a grade B is more desirable.

4.3 During the law degree

A test of sufficient stringency should be undertaken by all law students at the end of the first year. Those passing it would not be required to sit it again. Those failing it would be permitted to continue their law studies but would be required to undertake remedial tuition (in addition to their law studies)³⁰.

A test of similar stringency should be undertaken by those students who were required to undertake remedial tuition, to be conducted annually. Affected students should be given the opportunity to fail it twice³¹.

4.4 Entry to the LPC

Students should be accepted into an LPC course only if they have obtained an overall IELTS score of not less than 7.

³⁰ Derived from the Report of the Consultants on "Legal Education and Training in Hong Kong: Preliminary Review".

³¹ Ibid.

4.5 Entry to the trainee solicitor contract

Persons should be accepted into a trainee solicitor contract only if they have reached the benchmark in English language ability recommended by the Law Society.

4.6 Active learning

The process of active learning in the teaching of law should include a strong and rigorous emphasis on the use of English. One of the criteria for assessment of all oral and written assessable work in the LLB degree should be English language ability appropriate to the work being assessed, and this criterion should be assessed rigorously, to the point where work could be failed on that basis alone³².

4.7 Chinese

It is highly desirable that there be a number of those admitted to practice in Hong Kong who are able to use the Chinese language, where appropriate to their practice, to comparable standards as those required in regard to English.

Continuing training in the Chinese language should be provided for students and lawyers who have capabilities in the use of Chinese.

³²

Ibid.

5 Continuing professional development

5.1 General principle

Continuing professional development is both an individual and collective responsibility. All solicitors in Hong Kong need to be committed to lifelong learning which will enable them to respond to the changing needs of society.

Collectively, the Law Society will ensure that high quality continuing professional development activities are available to all members of the profession.

5.2 Aim of continuing professional development

Continuing professional development will foster the development and knowledge of solicitors necessary to provide high quality and efficient legal services to the community, and will promote a spirit of continuing learning amongst solicitors. Professional development activities will enable solicitors to:

- acquire a wide range of skills relating to the delivery of legal services and the management of their practices;
- work with and train others involved in the delivery of legal services;
- maintain an up-to-date knowledge of the law and changes in the practice of law;
- master new areas of the law; and
- maintain and enhance their level of competence.

5.3 Mandatory continuing professional development

Under the Continuing Professional Development (CPD) Scheme which commenced on 1 January 1998, it is mandatory for all trainee solicitors and solicitors with practising certificates to undertake continuing professional development of a minimum of 15 CPD points each practice year.

The Law Society's policy is that:

- there should be a broad range of activities for which CPD points can be accumulated;
- enhanced accreditation points should be allocated to target areas, such as professional ethics;

- there should be a mandatory practice management course for all solicitors seeking an unconditional practising certificate for the first time;
- the onus for keeping a record of CPD points accumulated to ensure that the relevant CPD requirement has been fulfilled should rest with solicitors and trainee solicitors and not the Society. The Society's role should be to ensure that quality courses are on offer to meet the training needs of practitioners and to monitor compliance with mandatory CPD by conducting audits; and
- the method of accreditation of CPD activities should be by way of provider accreditation for providers who can demonstrate a good track record as a provider through course by course accreditation by the Society.

6 Risk management education

6.1 Introduction

As a kind of continuing professional development, the Law Society has launched a Risk Management Education Programme pursuant to the Legal Practitioners (Risk Management Education) Rules since November 2004. The application of the Programme is phased in so that it applies to solicitors, trainee solicitors and registered foreign lawyers working in Hong Kong law firms by stages.

6.2 Aim

The Risk Management Education Programme is aimed at:

- (a) raising the awareness of risk issues within law firms;
- (b) promoting good risk management of legal practice;
- (c) teaching the importance of managing operational risk within law firms and the specific processes and procedures for sound risk management;
- (d) enhancing the level of professional competency in firms with the intention of reducing errors and omissions in practice;
- (e) improving the quality of legal services provided to clients benefiting both the public and the legal profession as a whole.

6.3 RME programme

Practitioners subject to the RME Programme are required to complete a one-off RME core programme in the first year of practice and not less than 3 hours of RME electives every subsequent practice year.

The RME core programme is designed differently for principals, non-principal solicitors and trainee solicitors targeting at the specific training needs of each category.

The core programme generally aims at enabling the participants to:

- (a) understand the concept of risk management;
- (b) understand the practical techniques for risk identification, analysis and control
- (c) understand the common risks in a solicitors' practice and identify risk issues that

particularly affect practitioners at different levels in a practice;

- (d) be aware of the effectiveness of methods of legal diagnostics and project management in the efficient formulation of strategy in contentious and non-contentious legal work in reducing risk;
- (e) demonstrate an understanding of the effective ways to communicate with clients and manage the engagement process;
- (f) demonstrate an appreciation of the importance of proper supervision, their role and responsibility in that process and adequate resourcing;
- (g) be aware of the ways to minimise and manage the risk of making mistakes in daily practice;
- (h) demonstrate an ability to transfer the above risk management skills to daily practice and to develop appropriate strategies for individual practice situation.

The fulfillment of RME elective obligation should not be restricted to the attendance of elective courses. Practitioners should be allowed to undertake different types of activities in a time conscious and cost effective manner provided that they satisfy the Law Society's accreditation criteria.

7 Practice management training

7.1 General principle

All solicitors responsible for running a legal practice will need to receive formal management training. The completion of such training will be a pre-requisite for all solicitors seeking an unconditional practising certificate for the first time.

7.2 Aim

Practice management training aims to:

- promote the importance of good practice management within law firms;
- improve efficiency and profitability of legal practices through the implementation of effective management systems;
- enhance the quality of legal services thereby reducing exposure to claims.

7.3 Scope

Broadly, practice management training should cover the following areas:

- Financial management with respect to profits, cashflows, cost, pricing and budgeting
- Staff management including recruitment, selection, motivation and delegation
- Information and knowledge management
- Client and engagement management
- Marketing and development strategies.

8 Post LLB training

8.1 Aim

The Law Society is of the view that there are very good reasons for the establishment of an institute which would comprise a one-stop shop for the provision and administration by the profession of qualifications and training for all lawyers post LLB. The most important reason is that it will ensure the maintenance of a consistent high quality and standard of professional legal education across the entire legal profession from the moment a student completes his LLB through to the end of his professional career.

Other reasons in support of such a proposal are that, given the size of the jurisdiction in Hong Kong, it will lead to economies of scale in the provision of these functions and services, and will result in better regulation of the profession.

8.2 Scope

It is proposed that this institute would, in due course, be responsible for:

- the Legal Practice Course for all intending solicitors and barristers following the completion of the LLB
- CPD programmes for both solicitors and barristers at all levels
- RME programmes for solicitors
- additional skills training programmes for the profession post-LPC, including advocacy skills training, mediation skills training, communication skills training
- specialist training in specified areas of practice and specialist accreditation
- implementing a Mandatory Practice Management Course for solicitors
- administering the Overseas Lawyers Qualification Examinations.

8.3 Establishment funding

It would be appropriate for government or other funding to be provided to enable the development of this institute³³.

³³ Ibid.

9 Academy of Law

9.1 Aim

Hong Kong Academy of Law Limited was incorporated as a company limited by guarantee. It is a registered charity promoted by the Law Society. Its aims are:

- To enhance public interest in the learning of law by providing a wide variety of legal education activities
- To raise public awareness of the rule of law and the other core values of the legal profession
- To assist legal practitioners in their professional development by providing high quality and affordable training courses and publications
- To provide pathway guidance to law students and nurture social awareness of the connection between law and other community developments.

10 Governance of the process of qualification for admission to practice

10.1 General

A Legal Qualifying Council should be established to set, monitor and govern the process of qualification for admission to practice, as either a barrister or a solicitor³⁴.

The Law Society and the Bar Association would continue to administer the process of dealing with applications for admission, collection of fees, issuance of practising certificates, and otherwise act as they do now – except that they would operate within the overall policy framework of requirements and standards as specified by the Legal Qualifying Council³⁵.

10.2 Powers

The powers of the Legal Qualifying Council should be –

- (a) To develop, prescribe and keep under review a general statement of the requirements and standards of those seeking admission as barristers or solicitors in Hong Kong regardless of where their training was undertaken.
- (b) To prescribe and keep under review the academic requirements for admission to practice.
- (c) To prescribe and keep under review the vocational requirements for admission to practice.
- (d) To prescribe and keep under review requirements for admission for those with degrees or other qualifications from institutions other than the three Hong Kong universities.
- (e) To monitor the provision of academic and institutional vocational training.
- (f) To collect and disseminate statistical information in regard to the legal education and training system in Hong Kong³⁶.

³⁴ This policy is largely derived from the Report of the Consultants on “Legal Education and Training in Hong Kong: Preliminary Review” except in relation to the composition of the Council.

³⁵ Ibid.

³⁶ Ibid.

10.3 Composition

That the Legal Qualifying Council should comprise³⁷ –

- one person drawn from the judiciary and nominated by the Chief Justice
- four people nominated by the Law Society
- four people nominated by the Bar Association
- one person nominated by the University of Hong Kong
- one person nominated by City University of Hong Kong
- one person nominated by the Chinese University of Hong Kong
- one person nominated by the Secretary of Justice
- one person nominated by the Secretary for Education
- one person from the community.

The Chairman should be appointed from the legal profession.

10.4 Public accountability

The Legal Qualifying Council should report annually, in some detail, on its work to all relevant stakeholders. Its annual reports should be in the public domain³⁸.

³⁷ The Law Society is not dogmatic about the configuration of the proposed Council, except to the extent that the legal profession should have the majority representation.

³⁸ Derived from the Report of the Consultants on “Legal Education and Training in Hong Kong: Preliminary Review”.

11 Training for Legal Executives

“Legal Executives” in a law firm are more than just legal support staff. They may enjoy certain rights of audience in accordance with the Court’s Practice Directions.

Accordingly, the description of “Legal Executive” in a law firm can only be adopted by those who have completed the appropriate training.

A course that offers the appropriate training required of a Legal Executive is referred to as a Legal Executive Course.

11.1 Aim of a Legal Executive Course

A Legal Executive Course should:

- (a) equip students with a general foundation of knowledge in selected areas of law and practice procedures;
- (b) alert students to the inter-relationships between legal principles and legal practices;
- (c) equip students with the basic skills to provide support to solicitors in various types of professional legal practice, including court appearances wherever permitted.

11.2 Admission to a Legal Executive Course

- (a) Students should be accepted into a Legal Executive Course only if they have passed 5 subjects in HKCEE including a minimum grade of D in English language (Syllabus B) (or equivalent) in pre 2007 HKCEE or a minimum level 3 in English language from 2007 HKCEE onwards.
- (b) In the event that a provider of a Legal Executive Course is not in a position to stipulate the admission requirements in paragraph 2(a), only those graduates of a Legal Executive Course who have satisfied the following requirements can use the description of “Legal Executive”:
 - (i) who have obtained a pass in 5 subjects in HKCEE or who have been in law-related employment for 3 years; and
 - (ii) who have obtained a minimum grade of D in English language (Syllabus B) (or equivalent) in pre- 2007 HKCEE or a minimum level 3 in English language from 2007 HKCEE onwards or a minimum overall score of 6 in IELTS (International English Language Testing System).

11.3 Scope of a Legal Executive Course

- (a) A Legal Executive Course must cover the following subjects on legal knowledge and skills pitched at the appropriate level that enables the students to achieve the learning outcomes as set out in the Appendix:

| Law | Practice | Skills |
|---------------------------------------|---------------------------------------|-------------------|
| (a) Land Law | (a) Conveyancing and Tenancy Practice | (a) Advocacy |
| (b) Contract Law | (b) Civil Procedure | (b) Legal Writing |
| (c) Tort Law | (c) Personal Injury Practice | |
| (d) Criminal Law | (d) Criminal Procedure | |
| (e) Company and Partnership Law | (e) Company and Partnership Practice | |
| (f) Family Law | (f) Matrimonial Practice | |
| (g) Probate & Succession | (g) Probate Practice | |
| (h) Hong Kong / Mainland Legal System | (h) Professional Ethics | |

- (b) Elective subjects may include Law of Evidence, Law of Intellectual Property, Employment Law, Information Technology and Management Skills, but their inclusion in a Legal Executive Course is not compulsory. It is a matter for the course providers to decide based on demand.

11.4 Assessment in a Legal Executive Course

In order to ensure suitably high standards, the assessment standards and methods used in a Legal Executive Course should be applied rigorously.

The Law Society must be satisfied that the examinations and other methods of assessment used during each year in the Course, in particular in the first year, rigorously assess whether each student is capable of proceeding on to the next year of the Course and graduation.

A student's participation in class should be part of the assessment scheme of each Legal Executive Course subject and there should be a compulsory requirement for students to complete a substantial writing exercise as part of the assessment for at least one law subject.

One of the criteria for assessment of all oral and written assessable work in the Legal Executive Course should be English language ability appropriate to the work being assessed, and this criterion should be assessed rigorously, to the point where work could be failed on that basis alone.

In seeking rigorous assessment standards, the Law Society expects that examiners must fail students who have not met appropriate levels of performance in examinations and other forms of assessments.

The Law Society which represents solicitors who are the main employers of the graduates of Legal Executive Courses expects to be involved in scrutinising the assessment process through the nomination of External Examiners on the Legal Executive Courses.

11.5 Teaching and learning methods

The process of active learning in the teaching of law should include a strong and rigorous emphasis on the use of English.

The lecture and tutorial method should be discarded as the primary mode of instruction and should be used only exceptionally. Interactive teaching in medium sized class groups based on pre-assigned and pre-read material should become the norm of instruction, where the role of the teachers is primarily that of stimulators, facilitators and modellers of analytical, critical, creative and deep thinking.

Teaching methods should be more interactive and devised in such a way as to encourage students to become active learners, to contribute to critical analysis during tutorials, to undertake further research beyond the materials supplied to them, to enable them to think logically, critically and creatively and to have the capacity to evaluate and to analyse legal problems and issues.

The providers of Legal Executive Courses should provide their teachers with adequate training and guidelines on the most appropriate, effective and up-to-date teaching methods and should be adequately funded with the resources to do so.

11.6 Staffing of a Legal Executive Course

Teachers on a Legal Executive Course should:

- have appropriate knowledge and understanding of the area/s of law being taught by them;
- have the necessary teaching skills³⁹; and
- undergo continuous professional development training to enable them to successfully

³⁹ Lecturers and tutors should be assessed periodically and evaluated by persons qualified to do so in order to ensure that they possess the necessary teaching skills.

carry out their professional duties.

A Legal Executive Course should have a ratio of teaching staff to students that facilitates individual instruction and feedback.

11.7 Delivery of a Legal Executive Course

Provided that the scope of the Legal Executive Course is covered, there can be flexibility in the way the Course is undertaken eg. by way of modularisation, or on a part-time basis, or by the inclusion of some distance learning approaches.

11.8 Familiarity with Hong Kong practice

A Legal Executive Course conducted by overseas providers may be deficient in areas which are unique to Hong Kong practice. Graduates of such Legal Executive Courses may be required to show competency in the deficient areas before they are allowed to use the description of “Legal Executive” in a Hong Kong law firm.

11.9 Continuing professional development

It is important that Legal Executives keep updated on changes in practice and procedure. They should be encouraged to undertake CPD activities appropriate to their scope of work. It would be helpful if a Legal Executive Course could reiterate the importance and the possible means of undertaking CPD activities throughout the career of a Legal Executive.

APPENDIX

LEARNING OUTCOMES

A. LAW

1. Land Law

Students will be able to:

- (a) understand and describe the nature and types of property;
- (b) understand and describe the basic principles of Land Law and the terminology used;
- (c) understand and describe the concepts of proprietary estoppel, co-ownership, land covenants and mortgage;
- (d) understand and describe the basic formalities for the creation, transfer and disposal of interests in land;
- (e) understand and identify the instruments registrable under the Land Registration Ordinance and the rules of priority.

2. Contract Law

Students will be able to:

- (a) explain the elements necessary for the creation of a valid contract;
- (b) understand and describe the remedies for breach of contract and explain when to use them;
- (c) demonstrate an ability to apply the basic principles in Contract Law to factual problems.

3. Tort

Students will be able to:

- (a) understand and describe the principles of specific common torts;
- (b) understand and explain the defences that can be used in specific tort cases;
- (c) understand the principles of vicarious liability;
- (d) understand and describe the remedies that are available to clients in tort cases and explain when they can be used;
- (e) demonstrate an ability to apply the basic principles in Tort to factual problems.

4. Criminal Law

Students will be able to:

- (a) understand and describe the principles of criminal liability;
- (b) understand and describe the main general defences in criminal cases;
- (c) understand and have a sound working knowledge of the main criminal offences common in Hong Kong;
- (d) demonstrate an ability to apply the basic principles in Criminal Law to factual problems.

5. Company and Partnership Law

Students will be able to:

- (a) understand and explain the various types of companies registrable under the Companies Ordinance, their formation, constitution and winding up;
- (b) understand and explain the appointment, resignation and removal of corporate officers, auditors, their powers and duties;
- (c) understand and describe the regulations and formalities at meetings;
- (d) understand and describe the nature of partnerships, their creation and dissolution;
- (e) understand and describe the rights and duties of the partners inter se and vis-a-vis third parties;
- (f) understand the role of Companies Registry, the Stock Exchange and the Securities and Futures Commission.

6. Family Law

Students will be able to:

- (a) understand and explain the relevant legislation and requirements for a valid marriage and the grounds for invalidity of marriage and divorce;
- (b) understand and explain the legal position of children involved in divorce proceedings;
- (c) identify and explain the courts appropriate to matrimonial causes and describe the framework of relevant legislation.

7. Probate and Succession

Students will be able to:

- (a) understand and describe the main principles to be aware of in the drawing up and execution of a legally valid will;
- (b) understand and explain the main clauses in a will and the purpose and effect of each;
- (c) understand and explain the law affecting the revocation of will and the law relating to intestacy;
- (d) understand and describe the powers and duties of personal representatives.

8. Hong Kong / Mainland Legal System

Students will be able to:

- (a) understand and describe the key features of the law-making process in Hong Kong and the Mainland;
- (b) understand and describe the structure and functions of the different courts in Hong Kong and the Mainland;
- (c) understand and describe the different sources of law in Hong Kong and the Mainland;
- (d) understand and explain the different roles and responsibilities of solicitors and barristers in Hong Kong;
- (e) identify the steps required for applying for Legal Aid in Hong Kong.

B. PRACTICE

1. Conveyancing and Tenancy Practice

Students will be able to:

- (a) understand and describe the procedure for a sale and purchase of land;
- (b) understand and describe the main content of various types of conveyancing documents including a sale and purchase agreement, an assignment; a mortgage and a guarantee;
- (c) describe different types of tenancy and legal issues related to a tenancy agreement, like rent, repairs, termination, assignment and subletting;
- (d) understand the purpose of the major clauses of a tenancy agreement;
- (e) understand and explain the respective rights and obligations of landlord and tenant in a tenancy agreement;
- (f) list the procedure, completion and post-completion matters of tenancy;
- (g) explain the jurisdiction of the Lands Tribunal and the procedure in dealing with a tenancy dispute.

2. Civil Procedure

Students will be able to:

- (a) describe the sources of civil procedure and pre-action considerations;
- (b) explain the formal requirements of pleadings and their amendments;
- (c) outline the services of process within and out of the jurisdiction;
- (d) recognise the limitation of legal actions;
- (e) explain the procedures in making an application to the court for a summary judgment and a default judgment;
- (f) describe the options and procedures for enforcement of judgments;
- (g) outline the general principles governing payments of costs;
- (h) state the general rules regarding appeals.

3. Personal Injury Practice

Students will be able to:

- (a) understand and describe the procedures involved in an action in which a claim is made for damages arising out of personal injury;
- (b) understand and describe the requirements of the relevant Practice Direction on personal injury actions.

4. Criminal Procedure

Students will be able to:

- (a) understand and describe the basic criminal procedures including types of criminal courts and classification of criminal offences;
- (b) understand and describe the procedures for the commencement of criminal proceedings;
- (c) understand and describe the powers of police before and after arrest;
- (d) understand the key factors for obtaining bail;
- (e) understand the procedures involved in sentencing.

5. Company and Partnership Practice

Students will be able to:

- (a) understand and describe the procedure and documentation required for the formation and operation of a company;
- (b) understand and describe the continuing legal obligations for the operation of a company;
- (c) understand and describe the practice and procedures for the liquidation of a company;
- (d) understand and describe the setting up of an offshore company.

6. Matrimonial Practice

Students will be able to:

- (a) understand and describe the procedures and documentation for undefended divorce;
- (b) understand and describe the procedures, orders and relevant grounds for financial provision available;
- (c) understand and describe the mediation requirements.

7. Probate Practice

Students will be able to:

- (a) apply the rules on wills and succession in probate practice and the administration of estates.

8. Professional Ethics

Students will be able to:

- (a) understand the role of the Law Society of Hong Kong;
- (b) understand and describe the principles of professional conduct applicable to solicitors / paralegals in Hong Kong law firms;
- (c) identify situations in practice that raise ethical issues and explain possible ways of resolving the issues;
- (d) identify common risks of misconduct.

C. SKILLS

1. Advocacy

Students will be able to:

- (a) demonstrate an ability to apply the strategies and techniques of advocacy in practice;
- (b) take standardised instructions from client;
- (c) conduct simple uncontested application before a master in chambers or an application listed for a three-minute hearing and before a taxing master on the taxation of a bill of costs.

2. Legal Drafting

Students will be able to:

- (a) understand fairly complex language, particularly in familiar situations;
- (b) construct and edit simple passages with accurate grammar;
- (c) with specific reference to an identified recipient, accurately draft a simple letter or memorandum confirming instructions.

.120033