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<th>The Law Society’s Power to set a Common Entrance Examination?</th>
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Legal education in Hong Kong can be broadly divided into three stages: (1) an academic stage involving the completion of a law degree at a university or the equivalent; (2) a vocational stage involving the study of a one-year course of Postgraduate Certificate in Laws (PCLL) at one of the law schools in Hong Kong, the course focusing on legal skills that are required for practice and aiming at preparing students for a transfer from the academic stage to legal practice; and (3) a professional stage where students will undergo a one-year pupillage with a barrister or a two-year traineeship with a solicitors firm before admission to full practice. The PCLL is a statutory qualification to legal practice. For historical reasons, it is administered by the law schools, with strong participation of the two professional bodies. In recent years, the Law Society has put forward a controversial proposal to introduce a Common Entrance Examination after the completion of the PCLL as an additional hurdle to admission to the solicitors’ branch of the legal profession. The proposal met with strong opposition from all stakeholders, including the Bar Association. The consultants on legal education appointed by the Standing Committee on Legal Education, the statutory body overseeing legal education, recently commented in their interim report that there was no sufficient or convincing justification for the introduction of the Common Entrance Examination. One aspect of the controversy is whether the Law Society has the power to introduce such an examination.

The Law Society proposed to introduce a Common Entrance Examination purportedly on the basis of s 4 of the Legal Practitioners Ordinance (Cap 159) and r 7 of the Trainee Solicitors Rules. This article

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1 Standing Committee on Legal Education and Training, Comprehensive Report on Legal Education and Training, Draft Consultant Report to the Standing Committee on Legal Education (October 2017, para 6.9), available at http://www.sclet.gov.hk/eng/pdf/interim2017.pdf (visited 17 April 2018). The consultants commented that the proponents of Common Entrance Examination have offered neither substantive evidence for the mischief nor any concrete proposal for change. The discussion was maintained at an abstract level, and the decision-making process lacks transparency, making it difficult for the stakeholders to have meaningful discussion, contrary to the public interest.
Johannes Chan (2018) HKLJ argues that, on a careful reading, r 7 does not confer on the Law Society a power to introduce a general qualifying examination similar to PCLL. Any attempt to introduce such a new general qualifying examination requires an amendment to r 7, which in turn requires the approval of the Chief Justice, failing which it would be ultra vires.

Historical Evolution of r 7

The introduction of a legal profession in Hong Kong can be traced to 1856. The creation of Hong Kong as a British colony was marked by the wholesale incorporation of English law in Hong Kong. Not being a settlement colony, there were few people in Hong Kong who were familiar with English law. Therefore, soon after the establishment of the Supreme Court in 1843, legislation was introduced to provide the admission of legal practitioners to the Supreme Court. The qualification for admission was rather loose. Apart from attorney, solicitors and proctors who were admitted in any of Her Majesty's colonies, any person who had served as a registrar, deputy registrar, clerk of the Supreme Court or a judge, interpreter of the Court, clerk of the Attorney General, a clerk of the peace or an articled clerk would be eligible for admission, subject to an examination of their fitness to be admitted. The power of admission, as well as the power to remove and strike off from the roll of attorney, solicitor, proctor or interpreter, was vested in the Supreme Court.

Until the establishment of the local law school in 1971, we basically adopted the English qualification with some overseas examination conducted in Hong Kong. The qualification was set out in regulations made by the Chief Justice. Thus, for example, under the Legal Practitioners Ordinance 1948:

"the Chief Justice may make regulations, subject to the approval of the Legislative Council, for the preliminary examination of persons intending to become bound under articles of clerkship to solicitors in order to ascertain the fitness of such persons".

The first major change was made in 1964 when the power of regulating the practice of solicitors was partially transferred from the Chief Justice to the Committee of the Law Society (later renamed as the Council of the Law Society). Under Pt VII of the Legal Practitioners Bill 1964, three different rule-making bodies were created. First, the Chief Justice

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2 Ordinance No 13 of 1856, ss 1 and 2.
3 Section 3.
was empowered to make rules regarding the admission of solicitors and barristers and the registration of notaries public, practicing certificates, fees and documents, and in addition rules relating to disciplinary proceedings against barristers. Second, the Law Society was empowered to make rules regarding a variety of matters concerning solicitors, their qualification and practice, but these rules were subject to the approval of the Chief Justice. Third, the Costs Committee was established to make rules prescribing the remuneration payable to a solicitor in respect of his non-contentious practice as defined.

Rule 14 of the Students Rule 1964, which was made pursuant to s 73 of the Legal Practitioners Ordinance and with the approval of the Chief Justice, sets out the qualifications required for admission, namely, (1) he has served the requisite articled clerkship and (2) he has either passed or been exempted from Part 1 of the overseas qualifying examination set by the English Law Society and has passed Part II of the same examination.

Introduction of Local Legal Qualification

In 1969, the first law school was established at the University of Hong Kong, offering a three-year LLB degree. This marked the beginning of local legal education in Hong Kong. It was at that time unclear whether and how the LLB degree would be recognised for admission to the legal profession. The position was clarified only in 1971, when the Department of Law introduced a one-year PCLL course after the completion of the LLB degree. Rule 14(b) of the Students Rules was amended in 1972 to provide two routes of entry to the solicitors’ branch, namely:

“(i) he has either passed or been exempted from each part of the qualifying examination; [referring to Part I and Part II of the English Law Society Examination]; or

(ii) he has obtained the Post Graduate Certificate [referring to the PCLL] and passed an examination in accounts set by the English Law Society”.

The PCLL was intended to be a common qualification for both solicitors and barristers. The Bar Association did not require passing an examination in Accounts, which was required to become a solicitor. The requisite paper in Accounts was not offered in the PCLL curriculum. Therefore, to become a solicitor, a student has to pass, in addition to the PCLL, an examination in Accounts set by the English Law Society.
In 1975, r 14(b)(ii) was further amended to read:

“(ii) he has obtained the Post Graduate Certificate and passed an examination in Accounts set by the English Law Society and passed such further examinations (if any) as the Society may prescribe from time to time in any particular case”.

Two observations could be made here. First, by this time there were two alternative routes of admission to become a solicitor in Hong Kong. The first was to take up and pass Part I and Part II of the English Law Society overseas qualifying examination. This route was provided primarily to those who were non-law graduates, including mature students in full-time employment who were not able to take time off to go to University or England, to qualify as solicitors in Hong Kong. The second route was to obtain the PCLL and pass other examinations as required. By this time, the University of Hong Kong was actively considering the introduction of Accounts, whether as a part of or outside the PCLL curriculum.

The second observation is that “further examinations (if any)” in r 14(b)(ii) is to be prescribed, not as a general qualification, but only “from time to time in any particular case”. This phrase has to be read in light of the PCLL being the general qualification. Thus, further examinations (if any) have to be different from the PCLL and should not operate as another general qualifying examination. They were similar to the Accounts paper, that is, something that was not offered in the PCLL and was intended to supplement the PCLL or to provide further advanced training, and were to be required as an exception on a case-by-case basis.

Cessation to Offer Overseas Examination to Non-graduates

The next major amendments took place in 1981. The amendments were prompted by a decision of the English Law Society to not offer Part I and Part II of the overseas qualifying examinations after 1980. Some concessions were made to allow those who had passed Part I to have another two years till 1982 to pass Part II of the examination, which would be administered by the Hong Kong Law Society. This would mean that the admission for non-law graduates and more particularly mature students in full-time employment who would not be able to go to university would be closed.

The Advisory Committee on Legal Education was asked by the Governor in Council to consider the matter urgently. In its Report in 1979, the Committee recommended, as a stop-gap measure, an increase in the intake number of LLB students from 55 to 80 and that up to 15 of
the additional places be offered to persons engaged in full-time legal or law-related employment.\textsuperscript{4}

The Report also dealt with the PCLL offered by the University. It considered that the PCLL “must remain the final qualification for entry into the profession in Hong Kong” and recommended an increase in the number of PCLL places from 55 to 65 for that academic year.\textsuperscript{5}

As to the more general question of admission of non-law graduates/mature students, the Law Draftsman, in moving the Legal Practitioners (Amendment) (No 2) Bill 1980, stated:\textsuperscript{6}

“But that is not to say that the door is being permanently shut on the means to qualify locally as a solicitor outside the university system. As part of the revision of the ways of entering the profession, the Hong Kong Law Society proposes, if the Bill is enacted, to amend the Students Rules to enable professional examinations to be prescribed. So that if the means, particularly facilities and staff, are found to provide suitable courses and examinations, non-graduate entry into the profession can again be provided for.”

Accordingly, r 14(b)(ii) of the Students Rules was amended in 1981 to read:

“(b) he has passed or obtained or been granted total exemption from —

(i) the qualifying examination; or

(ii) the English qualifying examination and such further examination (if any) as may from time to time be required and set or approved by the Society; or

(iii) the Post Graduate Certificate and such further examination (if any) as may from time to time be required and set or approved by the Society; or

(iv) such other examination or examinations (if any) as may from time to time be required and set or approved by the Society”.

Upon the abolition of Part 1 and Part II of the overseas qualifying examinations by the English Law Society, it would no longer be possible to enter into articled clerkship without having the necessary qualification

\textsuperscript{5} Ibid., p 250.
\textsuperscript{6} Ibid., pp 250–251.
for admission to solicitors. Thus, a new r 6A was introduced to set out the requirements of the same qualification for entry into articled clerkship:

“6A. No person may apply to the Society to enter into articles unless he has passed or obtained or been granted total exemption from —

(i) the qualifying examination; or

(ii) the English qualifying examination and such further examination (if any) as may from time to time be required and set or approved by the Society; or

(iii) the Post Graduate Certificate and such further examination (if any) as may from time to time be required and set or approved by the Society; or

(iv) such other examination or examinations (if any) as may from time to time be required and set or approved by the Society.”

The Explanatory Memorandum to the Students (Amendment) Bill 1981 was particularly enlightening as to the intent of the legislature. It is worth quoting it in extenso. It reads: 7

“These rules make extensive revisions to the principal rules consequent upon enactment of the Legal Practitioners (Amendment) Ordinance 1981 which abolishes the status of enrolled student. Prospective articled clerks will now have to complete all their examinations prior to entering into articles of clerkship. The changes have become necessary because of the phasing out of the present Part I and Part II qualifying examinations of the English Law Society and their replacement by a new system of examinations and training. As the Law Society of Hong Kong will continue to conduct Part II examinations for a limited period ending in November 1982 the changes to the principal rules include provision for both the existing methods of qualifying as a solicitor and the new system as introduced by the English Law Society. The Law Society of Hong Kong is also empowered to set or approve its own examinations as an additional means of qualifying in Hong Kong but the implementation of such a scheme will have to await the introduction of adequate educational facilities which presently are not available.”

Therefore, regarding the new qualifications set out in rr 6A and 14(b), para (i) referred to the existing Part I and Part II of the English overseas qualifying examination. Para (ii) referred to those who have completed (or been exempted from) Part I of the English overseas qualifying examination and will have to attend Part II of the English qualifying examination that

7 LN 44/81, LS No 2 to Gazette No 7/1981, B151–B152.
would be conducted by the Hong Kong Law Society until November 1982. Para (iii) referred to the local route of admission, that is, PCLL. As the University by then offered Accounts in its PCLL curriculum, the previous reference to the Accounts paper was deleted, and the further examination, as submitted above, had to intend to mean any specific requirement that had not been included in the general qualification of PCLL, such as continuing legal education. Para (iv) referred to an examination that may be held in future for non-graduates for whom the English route of admission would be closed after 1982, but no such examination would be introduced as no facilities were then available.

Admissions by the Newly Introduced English Legal Practice Course for Non-law Graduates

The next important development took place in 1993–1995. The principal object of the amendments to the Legal Practitioners Ordinance at this stage is to provide a statutory framework for the admission and regulation of foreign lawyers and foreign law firms in Hong Kong. At the same time, the Law Society of England and Wales has introduced a Legal Practice Course as an alternative route of admission to solicitors for non-law graduates. Rule 6A of the Students Rules, which had been retitled as the Trainee Solicitors Rules, was replaced by the new r 7 in 1994, provided:

“(1) A person may only enter into a trainee solicitor contract if he has passed or obtained or been granted total exemption from —

(a) the Part II examination set by the Law Society of England and Wales or the equivalent examination required and set or approved by the Society;

(b) the Solicitors’ Final Examination set by the Law Society of England and Wales and such further examination, if any, as may from time to time be required and set or approved by the Society;

(c) the Postgraduate Certificate in Laws and such further examination, if any, as may from time to time be required and set or approved by the Society;

(d) a Legal Practice Course recognized by the Law Society of England and Wales for the purpose of entering into a trainee solicitor contract, and such further examination, if any, as may from time to time be required and set or approved by the Society; or

(e) such other examination, if any, as may from time to time be approved by the Society.”
It could be seen that paras (a) and (b) are just tightening up of the previous paras (i) and (ii). Paragraphs (c) and (e) are the same as the previous paras (iii) and (iv), and para (d) is the only new paragraph. There is no reason to believe that there was any intention to change or enlarge the meaning of the previous paras (iii) and (iv) in the new paras (c) and (e).

Rule 7 of the Trainee Solicitors Rules was further amended and simplified in 1995, which is the current version, and reads:

“"A person may only enter into a trainee solicitor contract if he —

(a) has passed or received a certificate of completion or certificate of satisfactory completion as the case may be in —

(i) the Postgraduate Certificate in Laws and such other examination or course as the Society may require and set or approve; or

(ii) such other examination or course as the Society may require and set or approve; or

(b) has been granted total exemption by the Society from the requirements in paragraph (a).""

There was no indication whatsoever that the 1995 amendments intended to make any major change to the previous regime. Part II examination and the Solicitors Final Examination were no longer available by then. Legal Practice Course had become prevalent and had been offered in Hong Kong. Overseas Lawyers Examination was introduced by the 1993 amendments to the Legal Practitioners Ordinance. The historical evolution of r 7 shows that para (i) is about local qualification and para (ii) is about other qualifications. It may also be noted that, with the imminent change of sovereignty in 1997, it may not be appropriate to refer to English qualification in the statute. Thus, r 7(a)(ii) was drafted in a language that was wide enough to embody all relevant English qualifications that have hitherto been accepted. As far as “such other examination” in r 7(a)(i) is concerned, it has remained unchanged, and as argued above, such other examinations could only mean an examination other than a general qualifying examination and could not be of the same manner or similar to the PCLL. They have to be something over and above the PCLL.


Section 4 of the Legal Practitioners Ordinance provides:

“"(1) The Court may, in such manner as may be prescribed by the Chief Justice, admit as a solicitor of the High Court a person who the Court
considers is a fit and proper person to be a solicitor and who — (Amended 25 of 1998 s. 2)

(a) has complied with requirements prescribed by the Council with respect to employment as a trainee solicitor, the passing of examinations and the completion of courses; or

(b) in the case of a person who seeks admission on the basis of qualifications acquired outside Hong Kong, qualifies for admission under requirements prescribed by the Council. (Replaced 60 of 1994 s. 4)"

The requirements for employment “as a trainee solicitor, the passing of examinations and the completion of courses” have to be prescribed in the Trainee Solicitors Rules, which have to be approved by the Chief Justice under s 73(2) of the Legal Practitioners Ordinance. This would take us back to r 7, which has already been referred to above.

The above drafting history shows clearly that paras (i) and (ii) of r 7 could be traced back to 1981 and have since remained unchanged. Insofar as it is argued that the 1994/1995 amendments conferred the power on the Law Society to set a general qualifying examination such as the Common Entrance Examination, this argument is not supported by a careful reading of the drafting history. The provision existed in identical term in 1980 already. The PCLL has all along been recognised as the only general local qualifying examination. The power under r 7(a)(ii) is to deal with non-local route of admission and/or admission for non-graduates. The power to set further examination under r 7(a)(i) is to supplement and not to replace the PCLL. Such further examination could not be of the same nature as the PCLL, as it would defeat the purpose of the PCLL as a local statutory qualification. Historically, it is about the Accounts paper, and it now covers continuing legal education.

This construction is further buttressed by the fact that, in the last 150 years, any general qualifying examination, be it PCLL or Part I and Part II of the English Law Society Examination, is always expressly stated in the Rules. The power of the Law Society to set any general qualifying examination is circumscribed by the Rules, and such general qualifying examination has to be expressly set out in the Rules and is always subject to the approval of the Chief Justice. An argument to infer a wide and carte blanche power to set whatever examination the Law Society sees fit without going through the Chief Justice would defeat the purpose of the requirement to set out the examination in the Rules in the first place. It follows that if the Law Society is to introduce another general qualifying examination in the same manner or similar to the PCLL, such examinations will have to be expressly set out in the Rules and will require the approval of the Chief Justice. Rule 7 could not have conferred
on the Law Society a power to set a general qualifying examination such as the Common Entrance Examination, and any attempt to do so without amending r 7 and the approval of the Chief Justice would be *ultra vires* ss 4 and 73(2) of the Legal Practitioners Ordinance. There is also an obvious conflict of interests for the Law Society to solely determine who is to be qualified and permitted to enter that branch of the profession. To put the matter beyond doubt, the Chief Justice may consider amending and tightening r 7 accordingly.