

FOCUS:
Exams!?



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August 1978

Law Association
University of Hong Kong

VOTES OF THANKS TO OUR RESIGNED COLLEAGUES

It is our great misfortune to have 2 of our Editors, Mr. Danny Ng and Mr. Tai Chak-sum, resigning from the Editorial Board. They have been very active members of the Board and they have given us a lot of inspiration as to the improvement of the Law Media. We would like to deliver our sincerest thanks to both of them and we do hope that they would have a very bright future.

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EDITORIAL

This issue come out a little bit later than as planned, mainly because we are waiting for the great events to come out (namely, the announcement of the exam results and the annual ball), and partly because there is a general lack of material to be put in Law Media during the summer vacation.

In this issue, the exam results are again in the focus of our attention. The progress of our fellow school-mates is shown by the exceptionally low 'casualty rate' (repetition or discontinuation of study) and the generally favourable comments of our lecturers. As members of our board have commented that the Law Media is too solemn a magazine, we decide to put in more light-hearted material. We hope you will enjoy it.

During the summer vacation, the summer functions of the Law Association make their appearance. They include a launch, the Annual Ball and the coming orientation programme. The Annual Ball of this year is a tremendous success. Those who have participated must have enjoyed themselves a lot. In this issue, our Chairman will be telling you the story.

Of particular interest in this issue is our foreign correspondence column. We have a letter from our 'comrades' in the Malaysian University Law School and we are glad to have some information concerning the legal profession and the legal education in Japan.

We are greatly troubled by the printing mistakes in the last issue of the Law Media. We must express our regret for the spelling mistakes and this time we have adopted a special procedure in the preparation of the scripts, making sure that such mistakes would not occur again. However, for other printing mistakes, we must disclaim our responsibility and we would ask our printer to be extremely careful.

(The Law Media is a publication of the Law Association HKUSU and is for internal circulation only. The opinions expressed by the contributors do not necessarily represent those of the Editorial Board or the Association)

FOCUS : EXAMS

Exams seem to be a way of life for students generally in Hong Kong. It has been said that exams are an artificial burden because students are forced to memorize a lot of material to prepare for the exams; but often they would forget everything afterwards.

Exams and Study

However, many of our lecturers in the School of Law are of the opinion that exams should not be a great burden for students. Exams are by far the most useful way of 'measuring' a student's progress. Students studying intelligently should find exams just as an ordinary annual event.

Intelligent study means, in the first place, selective study. Often a university student has to cope with a great bulk of material. But that does not mean he has to take in them all. He must be able to select, to discard the irrelevant and concentrate on the material he has selected. Simple rote learning is wholly useless and 5 or 6 hours of labourious, pedantic poring over a great heap of materials is no substitute for a few minutes of discriminating reading and thoughtful analysis. Selective study is especially important for law students because a competent lawyer must be able to distinguish between what is material and what is not. The ability to select is something a student must acquire in a university education.

Intelligent study means, in the second place, understanding. Mr. Allcock said that students should first understand the notes before taking it down in lectures and what to be written down depended on whether the material was necessary and the issues involved. Mr. Downey was of the opinion that most of the students overworked themselves because they read without understanding anything and they tended to photocopy too much.

Results of this Year

The results of the exams were put on the notice board on the 5th July. The lecturers said the results were generally better than last year. However, it might be that the examination board as a whole was more generous because different examiners sat the board this year. Failure rate is lower than in previous years especially for 1st year. However, the performance of the 1st year students was much the same as that of the previous year according to one lecturer. Dr. Wesley-Smith said, except for one or two special cases, the performance was mediocre for both EPLLS papers. (performance in public law being better than in legal system) For 2nd and 3rd years students, the results were much the same as those of previous years. But Dr. Wesley-Smith was glad to tell the Editors that in Jurisprudence, given the nature of the subject and its general unpopularity, the performance showed a surprisingly high degree of sophistication.

Failures

Mr. Allcock said poor exam techniques were not the reason for failure since it was only important in putting or arranging the content. Nor were poor English standard and bad handwriting reasons for failure, though they could be very annoying indeed. The main reason was generally the failure to understand and digest the material and inability to master the law. Or, as Dr. Wesley-Smith put it, simply a failure to answer the question.

Correlation with Everyday Work and Performance

Most lecturers thought that, except for the exceptional cases, generally students performing well in classes did have better results in exams.

Indication of the Exams

According to the lecturers, the results of the 1st year tend to indicate what sort of students are fit for further studies. But promotion to senior years may not mean stable results in exams because that depends on the 'discipline of study' of the students themselves.

As for all law students generally, usually it is expected that students who do badly inside the campus would not be the best down-town practitioners.

by the Editors

THE LEGAL PROFESSION AND LEGAL EDUCATION IN JAPAN

(Editorial Note: most of us must have some idea of the legal system the legal profession and legal education in the Anglo-American countries like England, the USA, Canada and other Commonwealth countries. We are glad to receive a contribution concerning the legal profession and legal education in Japan. Although the essay is just a very brief survey, it is rather interesting to look at.)

In most Asian countries, largely as a result of tradition, the people in the government adopt an attitude of the 'superiority of the bureaucracy' and the common people fear and distrust the government. In Japan, until the fall of the Tokugawa Shogunate in 1868, the tradition of feudal rule accompanied by decentralization and strong local self-government fostered a militant attitude against any interference from the central government. The Japanese people liked to settle their disputes privately by compromise or violent means. It was a disgrace to go to the courts. Although time has changed, this situation has hardly changed.

The legal profession in Japan can be divided into 3 groups; the judges, the Public Procurators (similar to the Crown Counsels or the Public Prosecutors in the Anglo-American system) and the practising lawyers.

Compared with Anglo-American legal professions, the Japanese legal profession has much less mobility among the 3 divisions and a much weaker sense of unity among them.

In Japan, most of the judges have chosen their position as their career job. Apparently, being a judge is not very different from being an ordinary civil servant. A typical judge is appointed to an assistant judgeship immediately after having received training for 2 years at the Legal Training and Research Institute, and is promoted to the status of judge after 10 years, and intends to remain as a judge until the compulsory retirement age of 64 or 70 (Supreme Court Judge at 70, others at 65). The judges move from 1 position to another (usually every 2 to 4 years) as civil servants do. This practice is partly related to the graduated wage scale, which is not different in nature from the civil service scale, and partly related to tradition.

Japanese judges cannot be said to enjoy security of tenure. The supreme court judges are appointed by the Cabinet; the Chief Justice is appointed by the Emperor after nomination by the Cabinet. However, according to the Japanese Constitution, Supreme Court judges are subject to 'review by the people at the general election of members of the House of Representatives' every 10 years after their appointment. Inferior court judges only have a term of office of 10 years but as a matter of practice, very few have failed to secure reappointment.

Public Procurators in Japan also usually take the procuratorship as their career job. They, like other civil servants, not only in fact move from one position to another but are required by law to do so when requested. Nevertheless, they enjoy security of tenure until retiring age, except if unsuitable to perform their duties due to mental or physical disturbance or inefficiency in office.

As mentioned earlier on, the Japanese legal profession is sharply divided into three groups, and there is little mobility among them. It is possible, at least theoretically, for a practising lawyer after several years of experience to be appointed as a judge or a public procurator, but in fact this occurs only in a relatively limited number of cases.

Japanese judges and public procurators enjoy high social prestige (as being members of the bureaucracy!). But practising lawyers are in a lower social position. Therefore, they are often not enthusiastic about cooperating in the administration of justice, or about making positive contributions to law reform. They despise the bureaucratic spirit of the judges and the public procurators.

For most practising attorneys, the main sphere of activity is representing their clients in court and not preventive law. The Japanese people very rarely seek the help of a lawyer except on matters directly related to lawsuits. For such matters as the drawing up of a contract, the drawing up of a will or the purchase of real estate, Japanese people do it by themselves and seldom consult a lawyer.

LEGAL EDUCATION

The Japanese legal profession is in essence an elite. In order to get qualified, one has to pass several extremely competitive national examinations.

In order to enter the Legal Training Institute as a legal apprentice, one has to pass 2 national examinations as a first step. The first examination tests very general things like languages, current affairs et cetera, with heavy emphasis on memorization of minute detailed facts in great amount. However, one can seek exemp-

tion from the 1st exam by taking a University degree.

Those who take part in these exams are mostly law graduates from Japanese Universities. However, the education given by the law department of a Japanese University is not intended only for those students who will enter the legal profession but is directed broadly to those who will become public officials or company employees and need a general knowledge of law. Study centres on the 6 most important Codes, namely, the Constitution, the Civil Code, the Penal Code, the Commercial Code, the Code of Civil Procedure and the Code of Criminal Procedure. Instruction is chiefly by lectures to large classes. As a result, graduates of law departments generally have little knowledge concerning the practical application of law.

The 2nd exam was more competitive than the 1st and usually only 4% of the total number of candidates pass! But if one passes the 2nd exam, this is still not the end of the story. One is still not qualified to be a lawyer. One must receive 2 years of training at the official training centre- the Legal Training and Research Institute which is an agency of the Supreme court. Training includes classroom instruction and apprentice training in actual practice in civil and criminal departments of the various district courts, district procurators' office and practising lawyers' office. After completion of this course, the legal apprentices have to take part in an exam in order to qualify. Usually all the candidates pass. (After all, they are already the cream of the cream) Then these people are then eligible for the posts of assistant judge, deputy procurator or an ordinary lawyer. However, the posts of judges and procurators are greatly limited in number and these graduates again compete keenly for the government posts. A story of examination !!!!

by J. L. M.

FOREIGN CORRESPONDENCE (University of Malaya Faculty of Law)

(Editorial Note: we are glad to receive a letter from the Secretary of the Law Society of the University of Malaya, Miss Nik Ramlah Mahmood, telling us something about her Faculty of Law. The following is an extract from the long letter, which you may find it interesting to look at.)

'On behalf of all the members of the Law Society of the University of Malaya, I would like to convey my word of thanks to you and through you (the Editorial Board), to all the members of the Law Association of the University of Hong Kong for the interest which all of you have shown in knowing more about us and our activities.

Like the University of Hong Kong, the University of Malaya is also the only University in the whole of Malaysia offering a Law course. The Faculty of Law of the University of Malaya is about the smallest Faculty in the whole university. It takes in an average of 50 students annually and has a student population of about 200.

I guess, the Law students in both Malaysia and Hong Kong face a number of common problems. For instance, the Faculty of Law here is also regarded as the 'elite' Faculty and is also a centre of jealousy and envy for all other students. Then again, the Law students here are also well-known for their hard work and perseverance as competition is extremely keen in this Faculty. (As for admission generally) only those who have done very well in the Higher School Certificate (Exam) can gain entry into this Faculty

The Law Faculty here is also well-known for the very close relationship between the students and members of the academic staff. We regard our lecturers as friends. Such being the case the student-lecturer type of formality which is prevalent in other faculties is fortunately non-existent in the Law Faculty. We respect our lecturers as our friends, not as our superiors.

All law students are automatically members of the Law Society. Generally members are quite responsive towards society activities although there are a few passive members too. The good response can be attributed to the fact that most of our activities are geared towards making better members of the Legal Profession out of them. For instance, we organise Lunches at the beginning of every month. These lunches will be attended by about 30 members of the Society, members of the Staff and members of the Malaysian Judiciary and the Malaysian Bar. In so doing, we believe that the Legal and judicial profession is one entity by itself and hence we are helping our members to gain contacts with the experienced members of the Legal and Judicial profession. The members of the Legal Profession have been ever-willing to attend these lunches.

Apart from that, our activities also include public lectures given by prominent members of the Legal and Judicial Profession from Malaysia and also from other countries. Recently we had a public lecture given by Justice Enrique Fernando of the Supreme Court of Philippines. Two years ago we were indeed fortunate to have had lecture by the Honorable Lord Denning.

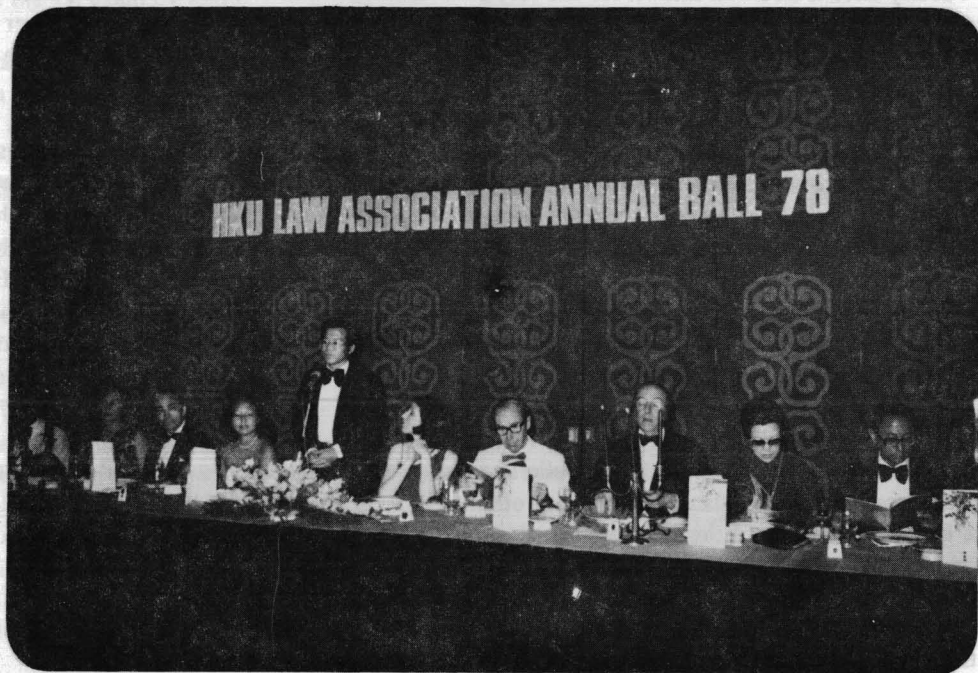
As regards our relationship with Law students elsewhere, we have a very cordial relationship with the Law clubs of the University of Singapore and often have games with them.

ANNUAL BALL 78'

The Law Association Annual Ball has been held on the 22nd July, 1978. We had the honour of having Sir Denys Roberts to be the Patron of the night. Many distinguished guests came too: our vice-patrons Dr. L.C. Huang and Mr. & Mrs. K. B. Chow; Mr. Justice Yang and Mrs. Yang, Mr. D.O.R. Mayne and Professor and Mrs. Willoughby.

The ball was preceded by a cocktail reception which started at 7:00 pm. This was the time when the students could meet the legal practitioners and had a friendly chat with them. The dinner started at 8:00 pm. After that, a fashion show was arranged. And then dancing started. Everyone enjoyed the music as we got one of the best bands in Hong Kong. The highlight of the ball came at about 11:00 pm-the lucky draw. All together 20 prizes were given out.

The ball ended at about 1:30 am. It had been a most enjoyable evening and many thanks indeed to the organizing committee for their hard work.



The Chairman, Mr. Roy Yu, was delivering his address.

Another LA function-the Launch

On the evening of June 24th, 1978, about 60 persons boarded a Chinese Junk. It left the Queen's pier and made for a lovely beach outside the harbour. This was the Summer Launch organized by the LA.

On Board the junk was about 40 law students. Quite a crowd of alumni participated. And we had Mr. Hicks, Dr. Wesley-Smith, Mr. and Mrs. Pegg, Mr. and Mrs. Sussex and members of the office staff-Mr. Shum and his family, and Mr. and Mrs. Chan.

When we reached our destination, we started the dinner. After which there were performances. We had also given out the Sport Awards and the Service Awards.

THINGS TO PONDER !?!!

(Editorial Board: the following passages or quotations are not merely jokes concerned with the law, like the former **Law without gravity**. They are in fact things for you to ponder about; something more behind the merely humorous appearance.)

* ?!!!? *

“Sarcasm seldom achieves anything but the raising of resentment; rudeness achieves still less. If, however, in order courageously to present your client’s case, you are constrained from sheer necessity to resort to something which might be thought to be sarcastic on even slightly rude, make sure you are wholly right. To be rude and wrong is fatal and, it has cynically said, is a privilege exclusively reserved to the Court of Appeal.”

from ‘The Technique of Persuasion’
by David Napley

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Jonathan Swift wrote of the legal profession: “I said there was a Society of Men among us, bred up from their Youth in the Art of Proving by Words multiplied for the Purpose, that White is black, and Black is White, according as they are paid. To this Society all the rest of the People are Slaves.”

from Gulliver’s Travels
(the capital letters follow the original)

We often received duplicated materials from our lecturers with the heading- ‘this is for bed-time reading only’.

X remarked: Better change it to ‘Read it in your dreams’, because I cannot digest it when I am in bed awake.

Y said: I think the American jurist Justice Holmes is probably right when he has once remarked that ‘The Law is a jealous mistress.’

from a ‘First Year Student’
(a contribution)

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UNBOWED

“This appeal has been brought in an attempt to force the court to bow to that modern Frankenstein, the computer The appeal is dismissed.”

Attorney-General v. Chiu Kam-hung
Cr. App. No. 503/78
per Huggins, J.A.

quoted in ‘Obiter Dicta’
Vol. 5 No. 5

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Magistrates in Hong Kong:

Nothman v. London Borough of Borret

(1978) 1 All E R at page 1245

per Lord Denning, M.R.:—

“Test pilots for instance, have a normal retiring age of 45, airline pilots 55, police officers 55, to which I may add magistrates at 70 and High Court Judges at 75.”

This quotation refers to England, of course. When compared with Hong Kong Practice, which, if any, of the following conclusions do you think you can legitimately draw?

- 1/ that judicial work requires greater alertness in Hong Kong than it does in England?
- 2/ that judges and magistrates age more rapidly in Hong Kong than do their fellows in England?
- 3/ that the English share with the Chinese a proper respect for age?
- 4/ that most people are past their best anyway at 55?
- 5/ that the body deteriorates before the mind?
- 6/ that magistrates and judges are very special people?

from ‘Obiter Dicta’
Vol. 5 No. 5

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Would you like to win a mystery gift?

If your answer is yes, then take part in the following game.

Method: In the Executive Committee members list on the back cover of the Law Media, our two ladies’ names are missing. All you have to do is to give us their names (Chinese names) by sending your answer to the Law Association or any members of the Exe. Co or the Editorial Board before September 15th, 1978. We have? Yes, we have 5 mystery gifts. If more than 5 give the right answer, we should have to draw lots. Thank you. Act now.

Executive Committee of Law Association:

Chairman: Mr. Roy Yu Man Kay
Vice-Chairman: Mr. Edward Fung Chi Kong
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(THE LAW MEDIA is **YOUR** publication. Write us anything **You** would like to raise. The Law Media depends on **your** support!)

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