

## **Examiners' Comments on the 2024 Examination**

### **Head II: Civil & Criminal Procedure**

#### The Overall Performance of Candidates

1. The number of candidates who sat the Head II paper in 2024 was 113, up from 86 in the previous year. One candidate was disqualified from Head II and her result for Head II was annulled. Of the 112 candidates, 69 candidates were given overall pass marks, resulting in a pass rate of 62%. This is a considerable improvement from the pass rate in the previous year where 36 out of 86 candidates were given overall pass marks. Pass rates seem to fluctuate and it is likely certain types of question may lead to higher and lower pass rates. The pass rates for the last five years have been 77% (2020), 32% (2021), 64% (2022), 42% (2023) and now 62% (2024).

#### The Standard and Format of the Examination

2. The Examination, as in previous years, was open book.
3. The Examination is premised on the standard to be expected from the Day One Lawyer. The Day One Lawyer is one who has completed both the academic and vocational stages necessary for professional qualification. In Hong Kong that means the LL.B (or a non-law degree and the CPE), the PCLL and the two year training contract. Day One Lawyers should have a sound base of substantive knowledge and have acquired the ability to apply that knowledge to straightforward situations. In reality those taking the examination will be more than Day One Lawyers because of experience obtained in their home jurisdictions. Even so the Panel was careful to focus on the "Day One" standard and to keep away from what might be classed as "advanced procedure" or "superior ability". A Day One Lawyer intending to practise in Hong Kong should, however, have the ability to demonstrate an appreciation of the structure, powers and responsibilities of Hong Kong's Courts and have a basic knowledge of what is required in advising and representing clients in litigious matters. They should not be a danger to the client.
4. The Panel was concerned to set questions which would test substantive knowledge and the ability to apply that knowledge in a constructive, practical and common sense manner. The examination deliberately mimics the situation of a solicitor asked to advise a client about a problem, and calls for directional practical answers, sometimes against an unfamiliar factual background.

#### General Comments

5. There were five questions in the paper, and candidates were required to answer any four of those questions. The time allowed was 3 hours and 30 minutes. The first 30 minutes is intended to allow candidates an opportunity to read and digest the questions in the paper and to plan their answers before starting to write. However, candidates can start to write their answers as soon as they wish.

## Performance on individual Questions

### ***Criminal Procedure***

6. Questions 1 and 2 focused on the kinds of issues any newly qualified solicitor should be able to guide their client through in a competent manner. The overall pass rate for criminal procedure was 36%.

#### **Question 1 (pass rate 57%)**

7. There are 4 parts in Question 1.
8. For Part 1: Generally well answered as it is straight textbook materials. I anticipate course provider have provided stock answers to candidates.
9. For Part 2: No candidates actually mentioned the accused lack any roots in HK!
10. For Part 3: Candidates were getting confused and convoluted in their answers! Poorly answered by most of the candidates.
11. For Part 4: Generally good analysis provided by candidates.

#### **Question 2 (pass rate 17%)**

12. Question 2(1) examines candidates' general knowledge from the prosecution's perspective. Only few candidates performed badly in this part.
13. Question 2(2) and 2(3) are related questions addressing the issue if a trial district judge/magistrate has jurisdiction to grant bail pending appeal. Some candidates failed to appreciate the distinction between their respective power.
14. Question 2(4) is relatively difficult question testing the candidate's knowledge of the accused's right of renewal of application for leave to appeal against conviction and the knowledge of the risk of "a loss of time" under section 83W of Criminal Procedure Ordinance.
15. Question 2(5) question is testing the candidate's knowledge of (a) "offering assistance to the authority" as an important mitigating factor in sentencing; and (b) the international element as an aggravating factor in sentencing for dangerous drugs cases. A significant number of candidates failed to identify "*Sivan* Procedures" at all.
16. The overall performance of the candidates who answered this Question was fair.

### ***Civil Procedure***

17. The overall pass rate was 71% on the civil procedure side, which is up from 49% in the previous year and ahead of the pass rate of 62% in 2022. The pass rate varied markedly for the three civil procedure questions ranging from 81% who passed Question 3, through 71% passing Question 4 down to 45% who passed Question 5. This probably reflects the subject matter of the questions. So Question 3 (summary judgment application) is

marginally easier than Question 4 (sanctioned offers) and Question 5 (pre-action disclosure and detailed issues relating to discovery) is a broader topic and therefore harder to answer well.

### **Question 3 (pass rate 81%)**

18. Question 3 related to a relatively straight-forward claim for repayment of a loan.
19. There were two questions set to test the candidates' knowledge of the steps required to issue legal proceedings and apply for summary judgment.
20. The first question required a letter of advice to explain the procedure both for the issue of proceedings and an application for summary judgment. Candidates were requested to identify the appropriate court to issue a writ, the filing of an acknowledgment of service and the ability to apply for summary judgment. Candidates were expected to explain how to apply for summary judgment, what the defendant might do in opposition to such application and the matters the court would take into account when deciding on a summary judgment applicant.
21. The second question required candidates to draft an affidavit in support of the summary judgment application.
22. The overall total marks were high. While there was some confusion as to the correct defendant, most candidates had a reasonable knowledge of the principles of issuing a writ and applying for summary judgment.
23. As for drafting the affidavit, again most candidates made a reasonable attempt at producing a good draft. Given a precedent can readily be found, some of the free drafting employed was perhaps a little odd but overall this part of the question was dealt with well by the majority of the candidates.

### **Question 4 (pass rate 71%)**

24. Question 4 raised issues concerning the costs of a civil action. These were first, the nature of a costs order *nisi*, and secondly the possible grounds to apply for variation of such an order.
25. The facts set out in the question posited an unsuccessful defendant unhappy with an order *nisi* that it pay the costs of the successful plaintiff after trial, given that the latter had:
  - 25.1 refused mediation;
  - 25.2 failed to obtain judgment better than a sanctioned payment and top-up thereof; and
  - 25.3 despite having proceeded in the Court of First Instance, obtained damages assessed at an amount within the jurisdiction of the District Court.
26. On the whole the performance of candidates was reasonable and the pass rate was good.
27. One of the pleasures of being an examiner is learning from candidates. This year several candidates pointed out that in regard to point 2 above, pre-judgment interest needed to

be taken into account. This had been overlooked in preparing the notes for examiners. Naturally these candidates were rewarded appropriately.

28. Only one or two candidates spotted point 3 above, though the draft question had been amended to make the issue more obvious. No candidate was marked down for failing to spot this point, but candidates who did spot it were given credit for doing so.

**Question 5 (pass rate 45%)**

29. Question 5 concerned the topical subject of a financial scam with a forged cheque, a romantic angle and potentially compromising messages and photographs.
30. Candidates were asked questions relating to the general topic of obtaining and disclosing information in litigation.
31. The first question sought knowledge by candidates of pre-action disclosure of information under the *Norwich Pharmacal* jurisdiction and the procedure in making a *Norwich Pharmacal* application.
32. The second question related to general principles of discovery and when discovery must be given. There was a gloss in the question requiring candidates to show awareness of concepts of privilege specifically legal professional privilege and the privilege against self-incrimination particularly as those heads of privilege applied in the context of discovery.
33. Candidates found this question harder than the other two perhaps because the questions covered broader areas of the law. This seems to follow a pattern of previous years where questions with a specific focus on a particular litigation procedure (such as methods of enforcing a judgment or a security for costs application) are answered better than questions requiring a broader legal knowledge.