

## **Examiners' Comment on the 2025 Examination**

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

#### The Overall Performance of Candidates

1. The number of candidates who sat the Head II paper in 2025 was 97, down from 113 in the previous year. 22 candidates were given overall pass marks, resulting in a pass rate of 23%. This is a considerable deterioration in the pass rate from the previous year where 69 out of 112 candidates (excluding 1 candidate who was disqualified from Head II and whose result for Head II was annulled) 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 32% (2021), 64% (2022), 42% (2023), 62% (2024) and now 23% (2025). This is however the lowest pass rate for many years.

#### 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 47%. The pass rate was broadly similar for both questions.

#### **Question 1 (pass rate 40%)**

7. Question 1 was in five parts.
8. The question was not unusually complex when compared with previous years.
9. Question 1(1) no candidates explained how the evidence can be “excluded”.
10. Question 1(2) the accused being an American citizen, only one candidate mentioned the accused can seek the assistance of the Consulate.
11. Question 1(3) one candidate mentioned the use of “electronic monitoring” which is not available in Hong Kong.
12. Question 1(4) some imaginative answers, e g, “undue influence”, “encourage to commit a crime” and “encourage to do so by Ernest”. Not really focusing on answering the question.
13. Question 1(5) generally not well answered.
14. The overall standard of the answers was below par.

#### **Question 2 (pass rate 51%)**

15. Questions 2(1) and 2(2) were related questions examining candidates’ general knowledge on bail applications and the variation of bail conditions. Candidates generally performed well in these parts.
16. In Question 2(3), most of the candidates were able to refer to case authorities to support the choice of venue remains a matter of prosecutorial decision free from any intervention.
17. Question 2(4) was straight-forward in testing candidates' knowledge on the determination of admissibility of evidence either by *voir dire* or by the alternative procedure. Some good candidates were able to mention that the alternative procedure is not available in a trial before a judge and jury in the Court of First Instance.
18. Question 2(5) question tested candidates' knowledge that the prosecution may appeal to the Court of Appeal against a defendant's acquittal by way of case stated pursuant to section 84 of District Court, Cap.336. Some candidates quoted the wrong statutory provisions for such appeal.

## ***Civil Procedure***

19. The overall pass rate was 21% on the civil procedure side, which is significantly down from 71% in the previous year. The pass rate did not vary markedly for the three civil procedure questions being 38% who passed Question 3, 22% passing Question 4 and 31% who passed Question 5.

### **Question 3 (pass rate 38%)**

20. Question 3 involved two elements. The first part consisted of a series of questions relating to the procedural steps to be taken on the way to trial, with specific reference to timetables and pre-trial directions and milestone dates, followed by a description of a trial itself with the order of trial, its length and the Court's overall control of its own procedure. This part of the question carried 18 marks.
21. The second part of the question sought knowledge of sanctioned offers under Order 22 R.H.C. and the procedural steps to be followed.
22. Overall, the results were disappointing given a knowledge of the necessary interlocutory steps in an action on a way to trial is a fairly essential part of the general knowledge of the litigation process.
23. Similarly, while some candidates seemed to understand and appreciate the procedural niceties of sanctioned offers, others were very wide of the mark.

### **Question 4 (pass rate 22%)**

24. Question 4 covered two parts of the syllabus: setting aside a default judgment and enforcement of judgment, carrying 20 and 5 marks, respectively.
25. Since the setting aside of a regularly entered default judgment requires the Court to exercise its discretion subject to certain criteria being taken into consideration, plus the question required candidates to advise a client, candidates needed to analyze the facts and apply the relevant law, instead of just regurgitating the relevant Rules of the Courts. The second part was a straightforward question, asking candidates to draft an affidavit/affirmation in support of an application for a Garnishee Order. All the information required to be included in the affidavit/affirmation was set out in the case scenario.
26. The facts of the question were clear in that the defendant did not dispute (i) the writ was properly served, and (ii) the default judgment was obtained properly/without irregularity. However, a number of candidates still spent time explaining the setting aside of an irregular default judgment, whilst some wasted time explaining how proceedings should be served or simply set out the rules and names of authorities, without applying them to the facts. This was not an advice to a client on the merits of a setting aside application. Only a very few candidates explained how the underlying objectives apply in this case.
27. The drafting question was simple. Some candidates did not get full marks because they did not include all the information required for the application in question.

**Question 5 (pass rate 31%)**

28. Question 5 covered two areas of the Syllabus. Parts (1) and (2) of the question which carried 17 Marks were on verification of a List of Documents filed and applying for specific discovery of documents not disclosed in a List of Documents filed.
29. Although the facts clearly stated that “.... *both parties have filed their Lists of Documents and inspection of documents has been done ....*”, a significant number of candidates treated these two parts of the question as a question on pre-action discovery. There were no parts of the facts which could have led candidates in such a wrong direction so the only conclusion must be sheer oversight/misjudgment on the part of such candidates.
30. Since these two parts of the question carried the majority of the marks, getting the focus wrong was not conducive to attaining the pass mark. Candidates therefore need to be reminded to read the facts and the question carefully before jumping to their answers.
31. The last part of question 5 was on interrogatories. It might be thought this part could be more difficult, given interrogatories are relatively uncommon and certainly when compared to the parts of the question on discovery, but most candidates were able to identify the need to apply Order 26 R.H.C. and did reasonably well in its application to the substantive questions asked.