

Examiners' Expectations and Comments

Head II: Civil and Criminal Procedure

Candidates will be assessed upon their substantive knowledge of civil and criminal procedure and upon their ability to apply that substantive knowledge to factual scenarios. The standard expected is that of "the day one admitted solicitor". The day one admitted solicitor is one who has obtained a law degree (or its equivalent), completed the one year PCLL programme and a two year training contract. Head II examines Hong Kong civil and criminal procedure. Candidates from other jurisdictions must appreciate that reality. Civil and criminal procedure in Hong Kong may, and often does, differ from civil and criminal procedure in other jurisdictions. Candidates intending to practice in Hong Kong must demonstrate appreciation and understanding of Hong Kong law and procedure.

In previous years, the examiners have observed that many candidates have apparently put in little preparation for the examination. There appears to be a tendency to rely upon finding the answer from materials taken into the examination. Open book examinations are not simply tests of ability to copy from texts. The examiners will be looking for candidates being able to demonstrate knowledge of the subject and to combine that knowledge with the practicality and common sense necessary for basic survival in professional practice.

The examiners have become concerned at the way in which answers are presented. There has been a regrettable tendency to write all that is known about a topic, whether that is relevant or not. This is a direct consequence of lack of preparation, lack of understanding and lack of appreciation of civil and criminal procedure. Marks will not be given for material that is not relevant to the question. This again emphasises practicality. Clients want their problems resolved: they do not want to know, for example, the history of a piece of legislation.

Candidates must read the questions thoroughly before attempting to answer them. Unless the question is thoroughly understood, the answer will not be focused upon the issues to be addressed. A question may contain several parts. The question may be a developing situation, with each part leading into the next part. Candidates should apportion their time to each part of the question in accordance with the marks shown on the paper for that part. Where the question is a developing situation, the question should be answered by starting with the first part and ending with the last part. This makes for a much more structured and presentable answer and should avoid contradictions within an answer. A candidate who gives advice in part (a) of a question and then effectively contradicts that advice in answering part (c) of the same question cannot be right on both occasions! The answer will be marked accordingly.

Some questions may require candidates to 'advise the client' or 'draft a letter of advice' or 'prepare a memorandum for the senior litigation partner'. Candidates must approach their answer accordingly. Advice to a client, particularly one with little legal knowledge, needs to be given in a way that client can understand. Asking candidates to write to a particular person is a way of testing candidates' knowledge and their ability to apply and explain that knowledge in the type of day to day situation likely to be encountered in practice. Answers that simply repeat sections

of texts, are redolent with crossings out, inconsistencies and errors, or which do not address the topic, will not be well received.

Where appropriate, candidates should demonstrate a working knowledge of relevant Hong Kong case law and legislation. Judgments of the courts can be readily accessed through the Hong Kong Judiciary web-site or through the Hong Kong Legal Information Institute web-site. *In addition*, the Hong Kong Cases and Hong Kong Law Reports and Digest are both accessible on-line. Hong Kong Ordinances and sub-legislation are similarly readily accessible through the Hong Kong Judiciary web-site.

A common error in the examinations has been the inability of some candidates to apportion their time between the questions. Time management is an important part of the solicitor's life. That reality should be applied to the examination. There is little point in concentrating the effort upon answering only two questions. One reason for such concentration may, unfortunately, be lack of preparation or lack of knowledge, but assuming there has been preparation and there is knowledge, candidates must attempt all the questions they are required to attempt.