

Examiners' Comments on the 2003 Examination

Head II: Civil & Criminal Procedure

Candidates must appreciate that the examinations are open book. Open book examinations are not simply tests of ability to copy material into an examination script. Open book examinations must be problem-based, discussion-based or comparison-based if the examination is to have the integrity demanded by a professional entrance examination. Open book examinations require more preparation than do closed book examinations because of the different orientation. Many candidates apparently did not appreciate this.

The objective of the examination is to provide an opportunity for candidates to show that they have sufficient understanding and appreciation of civil and criminal procedure to successfully confront situations that a 'day one' qualified lawyer could be called upon to face. 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, the PCLL and the two year training contract. Candidates must demonstrate a good working knowledge and understanding of both Civil and Criminal Procedure and the ability to apply that knowledge and understanding to practical situations. Questions are invariably based upon situations that have occurred in practice.

As in previous years, some candidates brought large amounts of material into the examination and spent time looking at that material. This indicates an absence of the in-depth preparation the examination demands and a misconception of the nature of open book examinations. Candidates must appreciate the need to prepare for the examination in advance. There is no substitute for hard work.

Some examination scripts revealed a basic failure to ensure that questions were understood before starting to write the answer. The first half hour of the three and a half hour examination period is intended to provide opportunity to read and understand the questions, to enable candidates to prioritise their answers and to plan those answers. Many candidates started writing very soon after being told they could begin the examination. There was a marked absence of planning of answers. Answers were fragmented, lacked focus on the issues in the questions, contained inherent inconsistencies and contradictions and revealed basic weaknesses of understanding.

On the civil questions, many candidates showed little appreciation of the difference between a general indorsement of claim and a statement of claim. There was demonstrated misunderstanding of damages and of the difference between liquidated and general damages. Many candidates were unable to write a letter of advice that would be presentable to a client.

On the criminal questions there was the same lack of focus and a marked lack of practicality. There was a signal failure to appreciate sentencing options. Suggestions were made e.g. that a detention centre order would be too severe a punishment but that a training centre would be appropriate. There was a lack of appreciation of when suspended sentences could be imposed and indeed the criteria for imposing a suspended sentence. There was a reluctance to take charge by e.g. suggesting a particular sentence and supporting that sentence with the reasoning that might persuade a court towards sentence. Setting out every possible sentence and leaving the choice to the court is an abdication of responsibility and also reveals basic lack of knowledge and appreciation.

The standard of presentation of some scripts left much to be desired in the sense that there were considerable crossings out and inter-lining. This indicates a failure to plan the structure of the answer before starting to write the answer. It is important that answers should be structured, address the issues in the question one by one in sequential order and keep within the boundaries of the question. Candidates who demonstrated they had absorbed and understood the basic principles of civil and criminal procedure and could apply those principles in a practical and common sense manner to the situations presented by the paper passed the examination. Those who did not do so failed the examination.

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