

## **Examiners' Comments on the 2004 Examination**

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

The performance of the majority of the candidates in the 2004 examination was disappointing. The standard of the examination was that of a 'day one lawyer'. As in previous years, the objective was to prepare a paper which was testing but fair and which addressed the substantive knowledge of civil and criminal procedure and the practical ability to apply that procedure to day to day issues to be expected from the 'day one' lawyer. The day one lawyer for this purpose is the Hong Kong day one lawyer: that is a candidate who has either a law degree or a non-law degree and the CPE, has completed the PCLL and the two year training contract. The examiners were confident that the paper was well within that standard. Regrettably the majority of the candidates failed to meet that standard.

An open book examination 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 examination scripts showed a serious absence both of understanding civil and criminal procedure and the ability to apply that procedure to practical scenarios. This may be because of a misconception of the nature of open book examinations. Candidates must appreciate the need for hard work before entering the examination room. The emphasis must be upon understanding principles and applying those principles to given situations. Some candidates appeared to have done little, if any, worthwhile study in advance of the examination and were apparently relying upon being able to look up answers in the examination room.

The day one lawyer should have a sound appreciation of the structure of the judicial system in Hong Kong and the powers and responsibilities of Hong Kong's Courts as that is the context within which the day one lawyer operates. Question No. 1 on the 2004 examination paper addressed very basic issues of criminal procedure. A candidate who had done any worthwhile study before the examination would have had little difficulty with that question. Most candidates coped tolerably well with that question. Question 2 should similarly have been well within the capacity of an averagely competent 'day one' lawyer. There was, regrettably, a signal failure to get to grips with the issues. Many answers were inexact, inappropriate and/or contradictory and revealed basic weaknesses of understanding and application. Many candidates missed the point that their client had been convicted and simply did not address the issues from the necessary starting point. This resulted in answers that contained much that was irrelevant. Whilst marks are not deducted for irrelevancies, irrelevancies do not attract marks. Question 3 required candidates to advise a client who had just been served with a writ

on preliminary points of procedure. There were no difficult issues to address. Candidates were instructed to advise the client by letter. The letter of advice was generally of a very poor standard. Despite candidates being told that the client did not “tolerate letters which were not clear and precise”, most of the letters were very poorly presented. Very few would have helped the client to understand the issues and make informed decisions. There was a marked absence of practicality and ability to communicate. Question 4 tested candidates’ appreciation of fundamental principles of civil procedure and should have been well within the competence of the ‘day one’ lawyer. Again fundamental weaknesses were revealed: many candidates seemed to have little idea of the principles of civil procedure. The same pattern was repeated with question 5. Most candidates seemed to have little appreciation of what was required; again fundamental weaknesses in knowledge and the application of knowledge were revealed.

The examination is of three and a half hours duration. This is intended to allow time for questions to be read and absorbed before answers are written. Many candidates failed to appreciate the advantages of ensuring that questions were understood and answers were planned and structured before starting to write the answers. The standard of presentation of some scripts left much to be desired. Answers were generally poorly constructed, fragmented, did not focus upon the issues in the questions and frequently contained contradictions and inconsistencies. Candidates must appreciate the need to structure answers, address the issues and keep within the boundaries of the question. It is also important to ‘write to the audience’ as that enables a candidate to demonstrate a thorough understanding of principles and the ability to apply those principles to the given situation through the advice given, for example, in a letter to a client. This cannot, however, be done unless candidates have put in the necessary hard work in advance of the examination to enable them to meet the standards required by a professional examination.