

The Steering Committee on the Review  
of Legal Education and Training  
in Hong Kong

Legal Education  
and Training  
in Hong Kong:  
Preliminary Review

Summary of Consultation Paper

September 2000

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### Summary of Consultation Paper

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Legal Education and Training in Hong Kong by:

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This Paper can be found on the Internet at: <http://www.hklawsoc.org.hk>

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**by 30 November 2000.**

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**Disclaimer:** Any opinion, findings, conclusions and recommendations expressed in this material (or by members of the project team) do not reflect the views of the Government of the Hong Kong Special Administrative Region or the Innovation and Technology Commission.

## Foreword by the Chairman of the Steering Committee

In November 1999, a Steering Committee was established to oversee a comprehensive review of legal education and training in Hong Kong.

This Consultation Paper has been prepared for the Steering Committee by two distinguished experts in legal education: Professor Paul Redmond and Professor Christopher Roper. Its purpose is to seek the views of members of the community on a wide range of issues concerning legal education and training that need to be addressed.

The present review is a matter of great importance. Law degrees and the postgraduate certificate in laws have been obtainable in Hong Kong for about thirty years now. During that time, there have been many changes affecting the practice of law, including the development of a bilingual legal system, but there has never previously been any comprehensive review of the training given to lawyers. Furthermore, various issues relating to legal education have surfaced in recent years, such as the quality of new entrants to the legal profession. These issues affect everyone in Hong Kong, both actual and potential users of legal services, and current or future providers of those services.

The Steering Committee therefore welcomes comments on the issues discussed in this Consultation Paper from all interested persons. With the benefit of the views collected, the consultants will prepare their final report and recommendations for consideration by the Steering Committee.

On behalf of the Steering Committee, I would like to express my warm thanks to the consultants for this thorough and stimulating Consultation Paper. The funding for the review is largely provided by a generous grant from the Innovation and Technology Fund, which is gratefully acknowledged.

I also wish to thank the members of the Steering Committee for their enthusiastic support for this project. They are:

Ms Camille Cameron	Associate Professor, School of Law, City University of Hong Kong
Ms Pamela Chan	Chief Executive, Consumer Council (Lay Member)
Prof Albert Chen	Dean, Faculty of Law, University of Hong Kong
Mr Graham Cheng	Chairman of Taching Petroleum (Lay Member)
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(R Allcock)  
Solicitor General (Acting)  
Chairman of the Steering Committee

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## Introduction

### *The purpose of the consultation paper: issues not recommendations*

This is a summary of the full consultation paper. The purpose of the consultation paper is to identify all of the issues which are significant for this review of legal education and training, and to assist readers to identify others that need to be examined in the review process. This is a summary of the consultation paper, not a report. The consultation paper does not contain any views or positions which the reviewers have formed, nor does it contain any recommendations.

Many of the opinions reported in this document are based upon an extensive series of consultations by, and documentation provided to, the reviewers or obtained from their inquiries. It must be emphasised, however, that the views expressed in those consultations have not been tested by surveys or like instruments widely employed in the social sciences. Often they reflect matters of judgment rather than fact. The opinions are reported in the consultation document with a view to attracting in the submissions and further consultation process as comprehensive a range of views as is possible on the issues arising in this review.

### *The manpower survey*

As part of this preliminary review, a manpower survey is being conducted. Its objectives are —

- to identify certain aspects of the current manpower situation of the legal services sector and
- to identify the future manpower needs of the legal services sector in Hong Kong.

The results of that survey will be available later in this year, and they will be an important supplementation to the information collected in response to this consultation paper.

### *The next steps*

In January 2001 the reviewers will meet with a number of those who have made submissions in response to this consultation paper, and possibly others. By that time, the results from the manpower survey will also be available. The report will be written in the following months and will be discussed with the Steering Committee for the Review. The report will be formally presented shortly thereafter.

### *Making submissions*

Submissions are sought from a wide range of perspectives. This summary of the consultation paper outlines many issues, and any person or organisation making a

submission is not expected to respond to every issue raised. Rather, those making submissions should respond to those issues which are most relevant to them or which they consider to be the most important. Submissions are sought on any issue which is seen to be relevant to the future of legal education and training in Hong Kong.

### *International practice*

Some reference is made in the consultation paper to international practice. This reflects the requirement in the terms of reference that the review should be “in the light of best international practice”. As it is not possible or appropriate to provide a comprehensive description of what is currently happening in all of the areas dealt with, the descriptions in the consultation paper are necessarily brief and selective. They are not included in this summary.

### *The issues raised*

There are many issues to be considered. Some of them are quite specific or narrow in focus, others are fundamental or ‘big picture’ issues. Both types of issues are considered in this paper. Submissions are sought in regard to both. At this stage of the preliminary review it is not appropriate to wrap more specific issues into larger ones, although that may become appropriate in the report which will be provided later in this preliminary review.

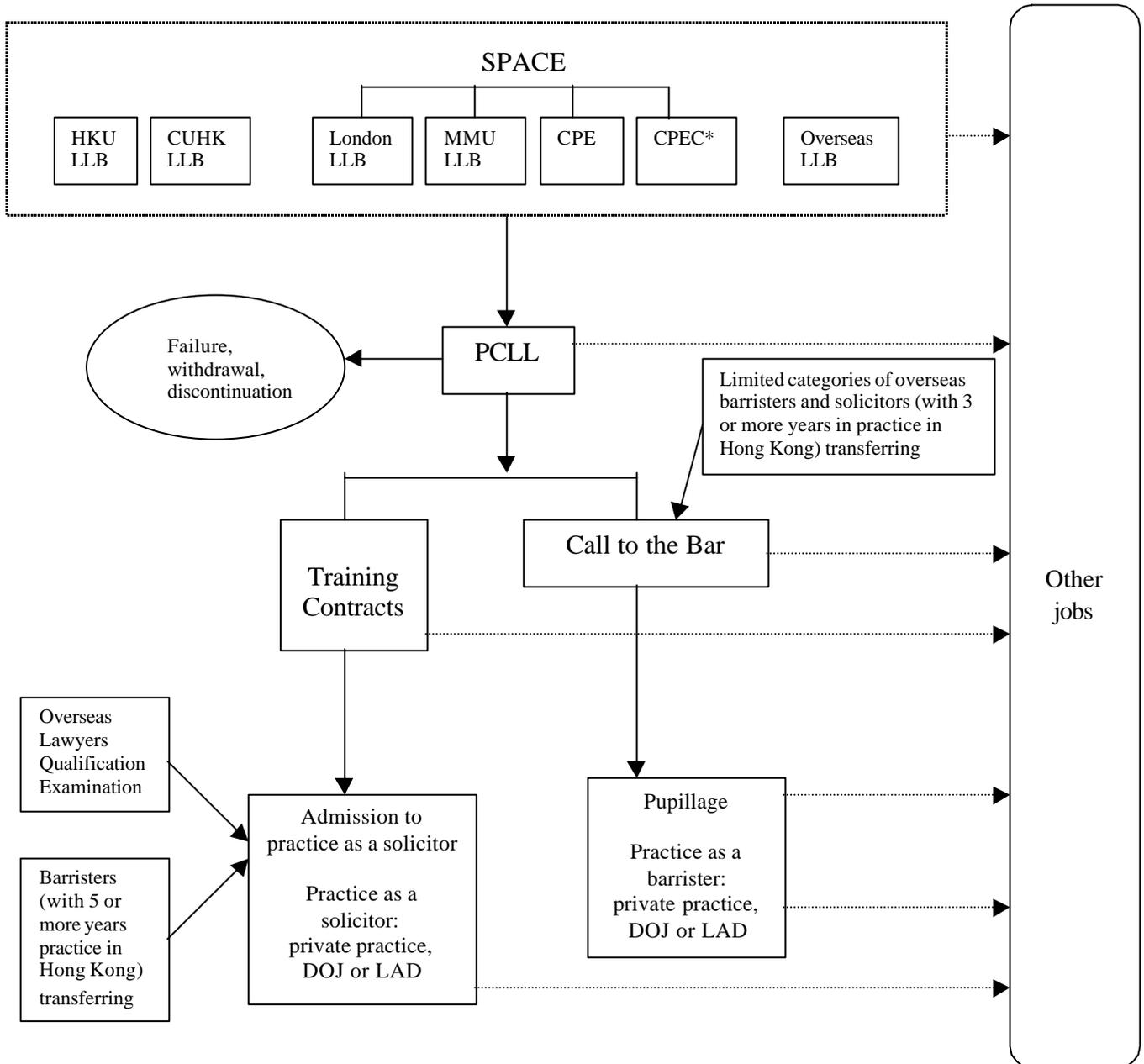
### *The terms of reference for the preliminary review*

The terms of reference for the preliminary review are as follows —

- 1 The aim of the preliminary review is, in the light of best international practice and having regard to the unique characteristics of Hong Kong:
  - (a) to assess the current system of legal education and training in Hong Kong, including an assessment of its strengths and weaknesses;
  - (b) to advise on the requirements of a legal education and training system best capable of meeting the challenges of legal practice and the needs of Hong Kong society into the 21<sup>st</sup> century and how these challenges and needs can be met by the legal education and training system;
  - (c) to provide a set of benchmarks for measuring the quality and standard of legal education and training in Hong Kong so as to ensure that those entering the legal profession receive the best legal training for the maintenance or improvement of professional standards;
  - (d) to provide suggestions and alternative models for a reformed system of legal education and training in Hong Kong; and
  - (e) to make recommendations for improvements in the system of legal education and training in Hong Kong, including reforms of the existing system or the introduction of an alternative model.
- 2 The preliminary review will encompass:
  - (a) all stages of the legal education and training of legal professionals in Hong Kong, including the detailed components and content of undergraduate legal education, vocational training (including articles and pupillage as well as the

- professional stage of university legal education) and post qualification continuing legal education; and
- (b) legal education for those persons who intend to pursue a career in areas other than legal practice.

## Diagrammatic representation of the Hong Kong legal education and training system



\*The CPEC has been suspended

## Abbreviations and acronyms

ACLE	Advisory Committee on Legal Education
ALE	Advanced legal education
Bar Association	Hong Kong Bar Association
BVC	Bar Vocational Course [of England & Wales]
CLE	Continuing legal education
CPD	Continuing professional development
CPE	Common Professional Examination [of England & Wales]
CPEC	Common Professional Examination Certificate [of Hong Kong]
CityU	City University of Hong Kong
DOJ	Department of Justice
HKSAR	Hong Kong Special Administrative Region
HKU	Hong Kong University (the University of Hong Kong)
JD	Juris Doctor
JEB	Joint Examinations Board
JUPAS	Joint University Programme Admission System
LAD	Legal Aid Department
Law Society	Law Society of Hong Kong
LLB	Bachelor of Laws
LLM	Master of Laws
MMU	Manchester Metropolitan University
LPC	Legal Practice Course [of England & Wales]
OLQE	Overseas Lawyers Qualification Examination
PCLL	Postgraduate Certificate in Laws
PLT	Practical legal training
SPACE	School of Professional and Continuing Education
TC	Trainee solicitor contract
The Law Society	The Law Society of England & Wales
the Society	The Law Society of Hong Kong
UGC	University Grants Committee
WTO	World Trade Organisation

# **1 The legal and social environment affecting legal education and training in Hong Kong**

The legal and social environment sets the context for this review. A distinctive mix of local and overseas trained law graduates seek admission to practise as lawyers in Hong Kong. The legal profession is composed of those who have trained in Hong Kong and those who have trained in other countries. It is probably more heterogeneous than most other jurisdictions because of the significant number of legally qualified people entering Hong Kong to work from other countries – both Hong Kong residents and others.

The distinctive international composition of the Hong Kong legal profession reflects the international character of the Hong Kong business and financial sectors and perhaps of Hong Kong society generally.

Another distinctive feature with a shaping influence upon this review is the pace of social, political, economic and technological change affecting Hong Kong itself.

## *1.1 The place of the common law and professions under the Basic Law*

The Basic Law, in article 8, preserves the common law previously in force in Hong Kong subject to the provisions of the Basic Law and amendments by the HKSAR legislature. The status of the legal system of Hong Kong as a common law system is thus accorded recognition under the Basic Law. Further, the Basic Law preserves the structure of the legal profession —

On the basis of the system previously operating in Hong Kong, the Government of the Hong Kong Special Administrative Region may make provisions for local lawyers and lawyers from outside Hong Kong to work and practise in the Region.

Thus the Hong Kong legal profession plays a central role in the constitutional structure of Hong Kong.

## *1.2 Entrenching capitalism and the legal infrastructure*

Special provision is made for the preservation of the capitalist system in Hong Kong by article 5 of the Basic Law. This has significance for lawyers in view of the role they play in the infrastructure that sustains business and commercial transactions and the resolution of disputes between their parties. A stable and reliable legal system is an essential element in sustaining business confidence in investment decisions taken with respect to Hong Kong. There is also the profession's important role of preserving the role of law and legality in Hong Kong society.

The institutions for the education and training of its members powerfully shape the quality and values of the future legal profession.

## *1.3 The status of Hong Kong as an international financial centre*

It is imperative that the legal education and training system prepare lawyers capable of delivering services at the standards necessary to ensure that Hong Kong remains one of the major commercial and financial centres of the world.

#### 1.4 *Hong Kong as a gateway to and from the Mainland*

Hong Kong lawyers, if they are to continue to play the role of a bridge between the outside and the Mainland, will need to be well-trained in Chinese law.

#### 1.5 *Language skills*

In view of Hong Kong's status as an international commercial and financial centre and the nature of its legal system and legal work, it is essential that all who undertake legal education and training have a high standard of English. It is desirable that those who have the capabilities are provided with opportunities to be trained to use Chinese to a high standard. Law is a profession that depends on the precise use of language.

The following are views expressed in the consultations and elsewhere; they are not necessarily the views of the reviewers –

- A bilingual educational system poses challenges to many law students, especially those for whom it is the first time they are required to use English in class.
- Even though law attracts many of the best students linguistically, English language proficiency remains a problem.
- No matter how clever one is, it is very hard to put together an argument cogently without good English language skills.
- The common law is a set of principles developed essentially around the language and the culture of England. So if a person does not have a facility with both, they cannot operate effectively. Language is the tool of the trade.
- Language is a set of analytic tools for applying an analytic process. Those without strong English will therefore suffer a handicap at some stage in the process.
- Generally, English is the language of international commerce and business.
- China sees Hong Kong as the interface for it with the world. It has no other reason to permit and encourage Hong Kong's distinct constitutional structure otherwise. If Hong Kong turns into a Chinese language system, it may weaken its claim to distinct second system status.
- Cutting the numbers for entry to law school in an attempt to raise admission standards impacts unfairly on talented students from a lower socio-economic status background whose English skills are weak because English is not spoken at home.
- The question arises as to whether there should be an English language proficiency test at some stage.

In addition, the effectiveness of the bridge that Hong Kong provides to the Mainland depends also upon proficiency in the Chinese languages and an understanding of Mainland China's legal, political, social, economic system and culture. The education system should also produce lawyers who can practise effectively in Chinese.

#### 1.6 *The Hong Kong school system*

Universities are facing an uphill battle, some claim, because of Government policy restricting teaching in English in secondary schools. Also a rote learning system impedes the ability to think critically and creatively, and fosters only modest evaluative and problem solving capacity, skill or interest.

## 2 Expectations and perceptions of the legal education system and of law graduates

The following are views expressed in the consultations and elsewhere. They are not necessarily the views of the reviewers. It must be re-emphasised that the views expressed in those consultations have not been tested by surveys or like instruments widely employed in the social sciences. The opinions are reported in the consultation document with a view to attracting in the submissions and further consultation process as comprehensive a range of views as is possible on the issues arising in this review.

### 2.1 *Expectations and perceptions of the legal education system*

#### 2.1.1 *That there is a match between the training provided and what is needed*

The fundamental issue is whether the right training is being provided for law jobs today and for law jobs in the future.

Has the legal education system kept pace with the many changes that have occurred over the last 30 years? Is it possible that, in fact, the legal education system is preparing its graduates for a world which no longer exists?

The question is whether what is taught, in both the LLB and the PCLL, and the standard to which it is taught, provides the core foundation of knowledge and skills for Hong Kong's lawyers in the variety of work they undertake today and for the future.

#### 2.1.2 *That it should produce lawyers who will meet needs for legal services which are at present unmet*

The consultations disclosed a widespread perception that, despite the frequently asserted oversupply of lawyers, there are significant unmet needs for legal services. Is this situation due, in part, to the legal education and training system?

Although it is sometimes claimed that there is now an oversupply of law graduates, it is noteworthy that Hong Kong has a comparatively lower lawyer per capita ratio than many comparable jurisdictions.

Despite popular opinion, it was suggested in the consultations that there are not enough lawyers in Hong Kong providing services to many people; that there is a bunching at the top end of the market. Legal services are unduly expensive for the vast majority of Hong Kong people. In a free legal market an important factor in ensuring that fees are reasonable and affordable is an adequate supply of lawyers to create a sufficiently competitive market in legal services. A reduction in those coming out of the PCLL would dilute that competition.

Do newly-trained lawyers have the requisite knowledge, skills and disposition to meet the needs, not just of the moneyed and advantaged but also of those who make up the majority of the population of Hong Kong? The consultations suggest that there is a

strong utilitarian ethos among law students and law graduates, and a lack of interest in any public interest, pro bono or community service work.

There is another type of legal need, which others are meeting but which lawyers could meet. The best example is the provision of taxation advice. As Hong Kong increasingly becomes a service economy with a strong information technology base, new legal needs will arise. This clearly has an implication for the legal education and training system.

#### *2.1.3 That there is an existing or emerging employment market for legally trained and educated people who are not practising lawyers*

There appears to be a widespread expectation, among students and others, that the purpose of studying law is to become a practising lawyer.

But the experience in a number of other countries is that an increasing number of law graduates are preferring and finding worthwhile employment outside the private legal profession, for which their legal education prepares and qualifies them. This phenomenon already exists in Hong Kong to some extent.

This issue is relevant to legal education because it raises the questions of how many should be trained in the law schools and the PCLLs, and to what extent the curricula should reflect a widening range of career destinations.

#### *2.1.4 That Hong Kong will produce lawyers of an international standard*

It is imperative that Hong Kong produce lawyers equal to the best in the world. Hong Kong's legal education system needs to be producing world-class lawyers. A notable aspect of the provision of legal services in Hong Kong is the extent to which lawyers are 'imported', particularly to do the most sophisticated legal work. The consultations disclose a perception that Hong Kong's own law schools are not producing enough world standard lawyers.

But there is a range of needs in Hong Kong. At one end are those needing highly complex work, requiring lawyers with highly sophisticated abilities. Those in the centre and at the other end also need competent and committed lawyers who are able to provide a wider range of services at an affordable cost. And so the imperative could be that Hong Kong has a world-class law degree, *ie* the degree itself, rather than its product, should be measured by world standards.

## *2.2 Expectations and perceptions of newly trained lawyers*

The consultations disclosed some negative perceptions of newly trained lawyers among employers, government, the judiciary, the two branches of the profession and elsewhere. These perceptions are recounted in this section. Their accuracy will be tested through the process of soliciting submissions and further consultation.

### *2.2.1 A decline in language skills*

The perception most frequently expressed in the consultations was that there has been a marked decline in the language skills of law graduates, generally English but also

Chinese. This is seen as especially serious, both because of the extent of the decline and its serious impact.

It has been suggested that there should be -

- a higher level standard in English for entry to law school, and/or
- an English language entry test for entry to the PCLL, and/or
- an exit test in English, at the end of the LLB and/or the PCLL and/or the trainee solicitor contract.

#### *2.2.2 Difficulties in communicating with clients*

Many newer lawyers are poor communicators, particularly with their clients, both commercial and private clients. Many lawyers do not really understand the needs and situations of their clients. Many lawyers have a relatively narrow world view.

#### *2.2.3 A lack of sensitivity to the needs of some clients*

Many newly-trained lawyers lack a sensitivity to some of the needs of some clients whose background is different to their own. There is a need for a service profession culture among lawyers.

#### *2.2.4 A lack of legal knowledge outside their own field of practice*

Many newly trained lawyers, both solicitors and barristers, have a very narrow range of legal knowledge. Many lawyers are not competent to deal with a problem of any complexity or legal problems and issues outside the law, such as technology.

#### *2.2.5 An ‘unhealthy’ preoccupation with conveyancing*

There has been an “unhealthy preoccupation” with conveyancing among many in the solicitors’ branch of the profession, because until recently “the money was easy”. Although the trainee solicitor contract requires trainees to be provided with proper training and experience in at least three areas of practice, in fact the experience gained in the conveyancing firms has been largely limited to conveyancing –but one of the areas. The result is that newly qualified lawyers are frequently formed in the image of their principals and the firm, and so replicate that form of practice when they go out into practice themselves.

#### *2.2.6 A lack of intellectual curiosity*

There is a lack of intellectual curiosity among many newly-trained lawyers: a tendency to have a limited outlook on life, concerned with short term, normally monetary, gains and a lack of a wider view of the world or a curiosity to expand horizons.

#### *2.2.7 A narrowness of thinking*

There is a certain narrowness of thinking on the part of many newly-trained lawyers. For example, they may have a reasonable knowledge of the law but they have great difficulty with expert evidence or concepts of scientific modes of thought or evidence.

### 2.2.8 *A lack of a range of intellectual skills*

Those skills might be described as the ability to think logically, to analyse a problem or legal issue, to think critically and have the capacity to evaluate, and to think creatively and be able to solve problems.

These are skills which are essential if the Hong Kong legal profession is to serve the needs of the people of Hong Kong and play its part in the maintenance and development of Hong Kong as a major international commercial and financial centre.

### 2.2.9 *Little awareness of the need for lifelong learning*

Although the Law Society, and more recently the Bar Association, have embraced the concept of lifelong learning, at an individual level there appears to be a low level of awareness of the professional commitment required to lifelong learning.

## **3 Structures of legal education**

The various aspects of legal education and training form part of a continuum of legal education. The need to see each aspect as an element of that continuum is a central theme of the consultation.

What should the continuum, as a whole, seek to achieve —what is its overall purpose? Then, what segments are most desirable and how they should be placed together with each other? It is good not to start with the structure and treat it as a given.

The models outlined below are not recommendations, but rather are put forward to provide a context for the discussion on particular issues.

### 3.1 *The general structure of legal education and professional admission in Hong Kong*

A distinctive feature of the Hong Kong legal education system is its location of both the academic stage and the professional training, taken in the PCLL, in a university department. That relationship reflects the origins of the PCLL programme.

### 3.2 *The origins of the PCLL programme and its location in a university department*

Although in name a postgraduate course, it has been argued that the modern PCLL is in substance an integral part of a four year course of professional training. The division of the university law curriculum into the LLB and PCLL is arguably artificial and the result of the accidents of the evolution of law teaching at HKU.

### 3.3 *Some alternative models of the structure of legal education and training of Hong Kong lawyers*

There are at least five distinct variables in the construction of alternative models of the continuum leading to admission as a lawyer. Each could have numerous variations.

Variable 1 – the duration of the PCLL: retain the present formal division between the two stages of LLB and PCLL and either retain the present duration of each stage (*model 1a*

*and 1b)* or extend the period of the PCLL to, say, two years (*model 2*). Under model 2 the duration of the training contract may but need not be the same as under model 1.

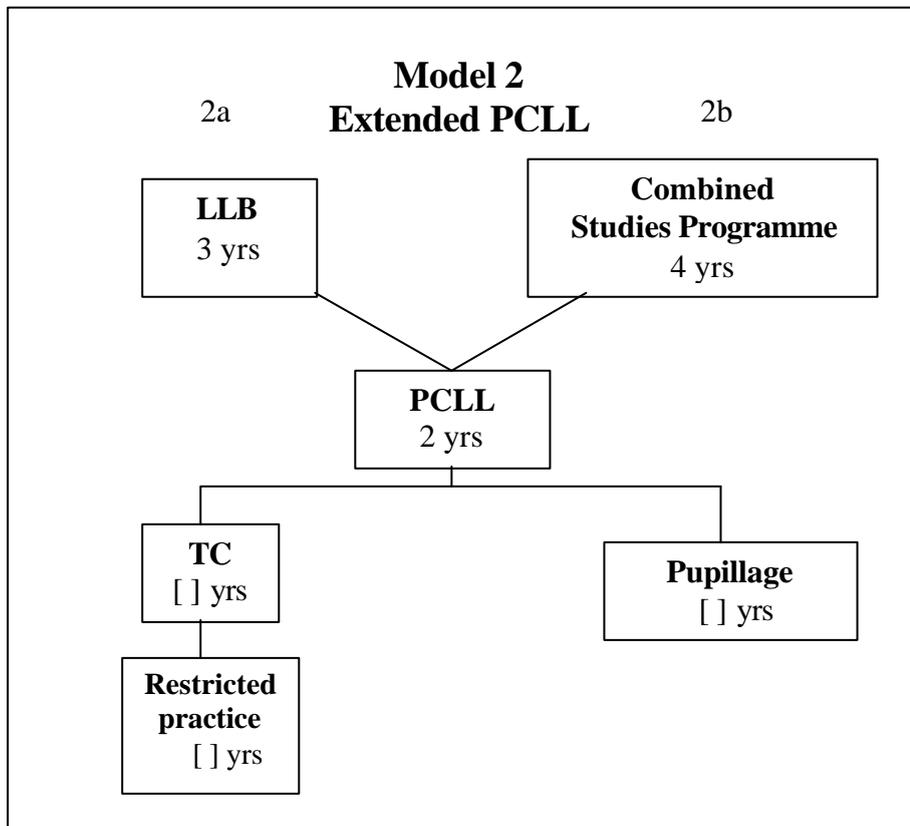
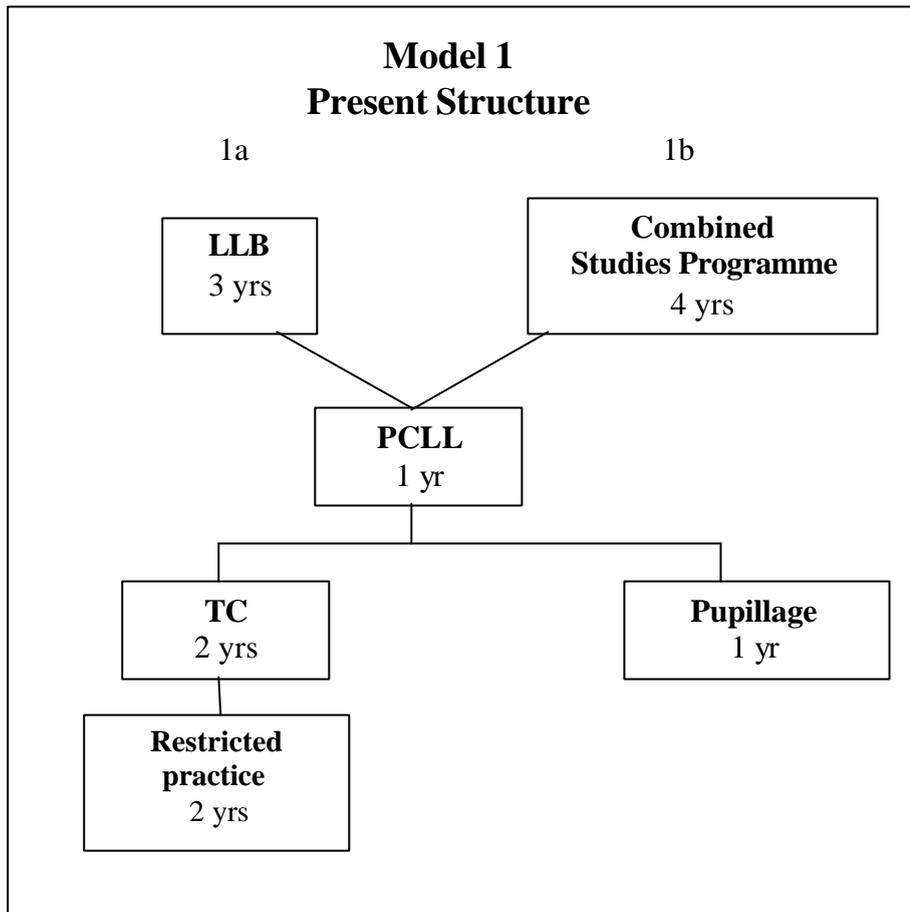
Variable 2 – create an alternative to the training contract in the form of institutional skills training for prospective solicitors (*model 3*). It might also be offered to prospective barristers in addition to, or as a component of, the pupillage requirement.

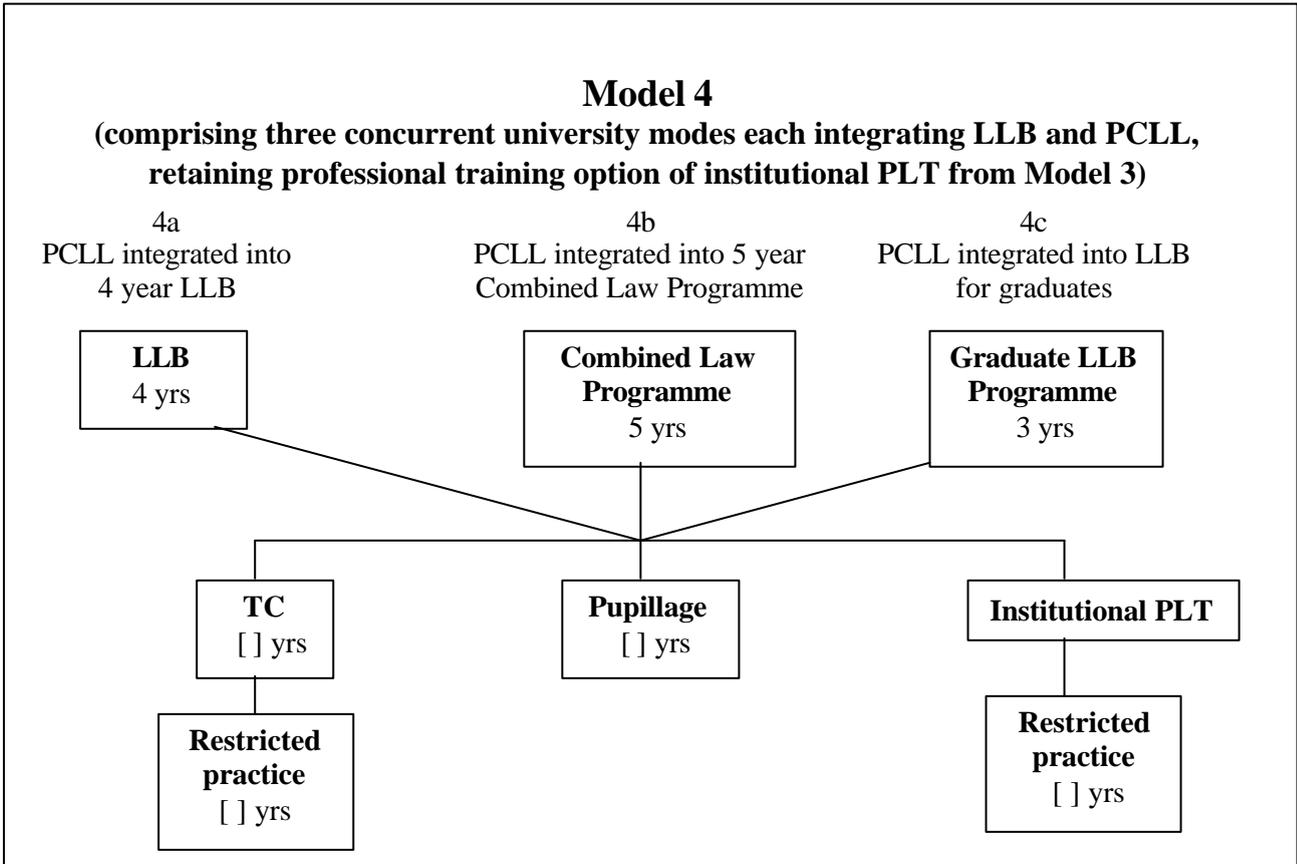
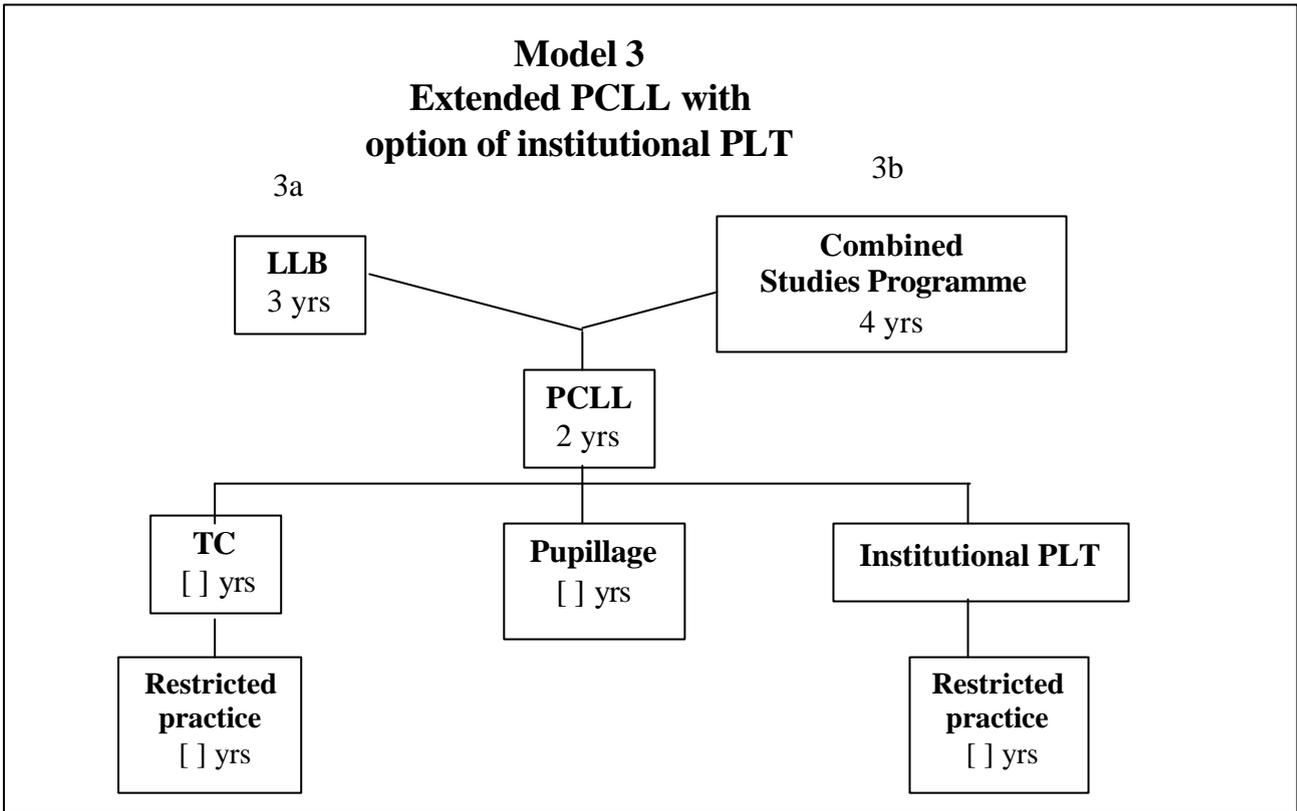
Variable 3 – integrate the LLB and the PCLL into a four-year LLB, including those subjects from the PCLL which are considered necessary for legal practice (*model 4a in model 4 and model 5a in model 5*).

Variable 4 – offer combined and graduate law degree programmes as alternatives to the stand alone LLB but in each case with the PCLL integrated into the LLB as in variable 3 (*models 4b and 4c in model 4 and model 5b and 5c in model 5*). Model 4 adopts the post-LLB option of institutional skills training as an alternative to the training contract and pupillage as in model 3.

Variable 5 – offer compulsory institutional skills training prior to the training contract and pupillage, perhaps in the summer vacation following completion of the LLB (*model 5*). The duration of the training contract and pupillage under this model need not be the same as under other models.

Each of these models assumes the continued UGC funding of four years of legal education, the present aggregate of the LLB and PCLL. The combined and graduate law alternatives under models 4 and 5 would require self-funding beyond the fourth year of university study. The recent proposals in the Education Commission's Consultation Paper to shorten the duration of senior secondary education and to extend by one year the normal length of first-degree programmes would probably therefore affect the standard duration of the LLB under each model. However, the models below are written with reference to the existing three-year LLB degree.



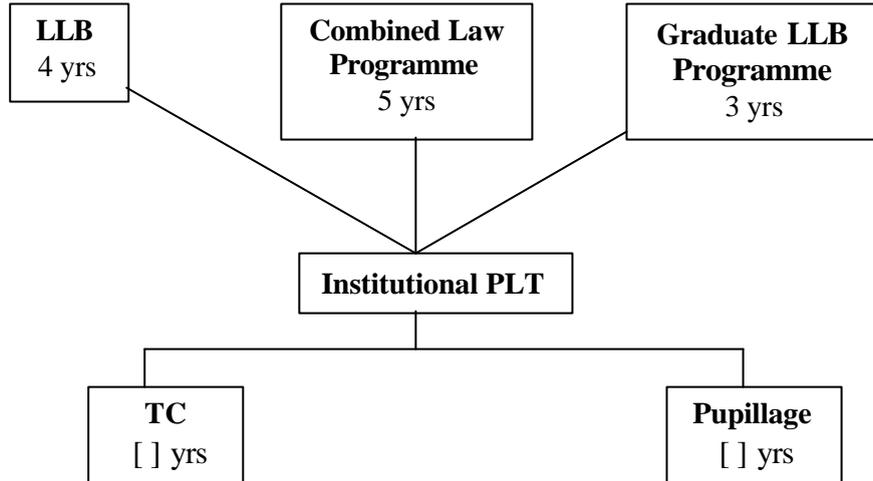


**Model 5**  
**(comprising three concurrent university modes each integrating LLB and PCLL,  
but with compulsory institutional practical legal training  
between university and in-training)**

5a  
PCLL integrated  
into 4 year LLB

5b  
PCLL integrated into 5 year  
Combined Law Programme

5c  
PCLL integrated into  
LLB for graduates



## 4 The academic stage of legal education - LLB

There are only two universities that award a law degree in Hong Kong. Legal education at HKU dates back to 1969. The Faculty consists of the Department of Law and the Department of Professional Legal Education. It has 47 teaching staff, 26 administrative, clerical and other supporting staff. There are a total of 924 students enrolled in various programmes offered by the Faculty.

The School of Law at CityU enrolled its first LLB students in September 1988. The original rationale for the LLB course at CityU was largely driven by the Hong Kong Government's desire to promote a second law school in Hong Kong which would supply the perceived need for local lawyers educated in Hong Kong law. In view of the increasing economic and political ties to the Mainland, there was also the motive to produce law graduates who appreciated the linguistic issues facing the Hong Kong legal system and who were knowledgeable in the legal system of the Mainland. In addition, CityU teaches a range of postgraduate programmes including the PCLL. Enrolments in law programmes are considerably lower than at HKU although, unlike HKU, law teachers at CityU are involved in a substantial body of service teaching for other programmes of the university.

### 4.1 *The goals of university legal education and the place of skills training*

#### 4.1.1 *The balance between professional and liberal education in the LLB*

In most common law countries there is a tension between the LLB's professional dimension and its function as a liberal education. It is widely accepted that law programmes should provide a broader, more liberal education and that the training of lawyers for private practice is no longer the sole purpose of the undergraduate degree. Thus, law schools attempt to teach students substantive and procedural law, help them to develop core competencies such as critical thinking skills, problem-solving skills, communications skills (oral and writing, English and Chinese), research skills, comparative law insights and inter-disciplinary perspectives. They attempt to place law in its social, theoretical or comparative contexts.

What mechanism needs to be established by the faculties to strike a suitable balance in legal education in the LLB with respect to the academic and professional components of legal education, between legal studies and liberal education?

#### 4.1.2 *The balance between acquisition of knowledge and skills in university legal education*

Similarly, there is a contest in undergraduate legal education between coverage of areas of knowledge and generic skills. The challenge is to shrug off an obsession with content in favour of wider intellectual and professional skills formation.

#### 4.1.3 *Other opportunities for law graduates and the implications for law school admissions*

The international experience is that more and more graduates seek a wide variety of positions in practice as well as non-traditional paths upon completion of their law degree

or articles. Some graduates seek employment with a policy division of the government, a business corporation, a community or public interest organisation, or another body such as an industrial union. Others choose a career in academia, the public service, international human rights organisation, or within business or financial sectors. Law has proved a prized preparation for these diverse careers. This diversity of graduate destinations has yet to reach its maturity in Hong Kong. It has implications for the question as to how many places should be made available for LLB programmes.

#### *4.2 Combined law programmes*

In combined studies programmes students do a mix of law and subjects in the other discipline stream for three years, and then take their degree. They are then able to do one more year of self-funded law study which entitles them to take a law degree. The mixed degree is, thus, of four years in length. These programmes are very popular.

It is said that these programmes do not fully expose students to cross-disciplinary perspectives; that students have a very heavy workload and simply do not have time properly to digest and appreciate the inter-disciplinary values in the programme or to bring the different perspectives they have acquired into proper focus. This is mainly due to the constraint that the mixed degrees have been offered within a 4 years model with the 4<sup>th</sup> year self-funded, which imposes great financial difficulty for students in many cases.

In Australia combined law programmes usually are of five years full-time study, of which the law component typically occupies three years. The rationale is to provide law students with a broad and liberal education. The intellectual formation of law students requires study of another discipline to expand their intellectual horizons and skills. It is fair to say that the popularity of law as a field of tertiary training in Australia rests significantly upon the appeal of the combined law structure. The dual degree requirement may serve the goals of intellectual formation, as in Arts/Law programmes. However, it can also provide powerful vocational preparation across a wider employment field, as in Commerce/Law programmes. Perhaps in consequence, in Australia legal education is valued both by students and employers as preparation for a wide range of careers outside legal practice, in finance and commerce, government and the community sector.

Simultaneous study in two disciplines, although sometimes intellectually disparate, greatly assists understanding of the other discipline. There is also considerable time saving as their standard duration is one year less than the aggregate length of the separate programmes. They also facilitate academic disciplinary specialism in a particular area as a prelude to potential professional specialisation upon graduation.

#### *4.3 Graduate law programmes*

Some argue that law should become a course for graduate study, that students should complete another degree before commencing legal studies. Some proponents of this view note the immaturity and lack of experience of students entering the law faculty straight from school; others suggest that success in tertiary studies is a better indicator of success at law school than performance in secondary school examinations.

In the United States and Canada the normal mode of entry to the legal profession requires seven years of study, four at an undergraduate level, followed by three years of study in law, leading to the JD degree. To require that law be a postgraduate qualification would prolong the period of study and make it more expensive. It would also arguably set the minimum standard at too high a level. It could, perhaps, prevent some from taking law degrees part-time because of the total length of study required.

#### *4.4 Part-time study*

Neither of the two law schools in Hong Kong provides opportunities for study at undergraduate level for part-time students. The possible exclusion from their programmes of mature and experienced students, who may have been denied the opportunity of full-time study, is relieved only by the existence of the SPACE programmes.

#### *4.5 Curriculum issues*

There are two broad areas of tension in relation to the curriculum of LLB programmes. The first is a problem of specifying the compulsory core that all students must undertake. The second concerns the difficulty of maintaining relevance so that curricula respond rapidly to legal responses to changing social and technological phenomena.

##### *4.5.1 The scope of the compulsory core*

Approximately one half of the LLB curriculum of each university comprises compulsory law subjects. The compulsory subjects are Constitutional and Administrative Law, Legal Systems and Method, Law of Contract, Law of Tort, Criminal Law, Property Law, Legal Theory, Mooting and Legal System of the People's Republic of China. Both universities have added compulsory study in areas such as English language, information technology, Chinese history and civilisation and general education. The LLB degree at CityU and HKU is said to be showing the strain of its short span of three years and of curriculum overload. This is compounded by the difficulty that students are not working in their mother tongue. The new combined studies programmes are squashed in, perhaps untidily.

There is an issue also as to whether the LLB curriculum should attempt to develop professional legal skills as distinct from both intellectual and practical legal skills. These professional skills might include client interviewing and counselling, advocacy and communication, negotiation, mediation, and other dispute resolution skills, and drafting and other legal writing and research skills. These skills are in addition to the skills of legal analysis and reasoning, comprehended as an essential part of core intellectual skills, and those practical legal skills such as in conveyancing transactions, which belong to vocational legal training. In some comparable countries, such professional skills are seen as an important part of the law school education process.

##### *4.5.2 Relevance and responsiveness in the elective portion of the curriculum*

Both law schools acknowledge the “tightness” of their three year LLB programmes. New areas of legal regulation and development make a legitimate claim for recognition within the LLB curriculum.

New fields of law are emerging, often in response to new technologies. Examples are Information Technology Law, Media Law focussing on technological convergence, Transnational Legal Problems arising from the internet, E-Commerce, Electronic Banking Law etc. Some of these areas are legitimately addressed in postgraduate programmes, but only a minority of law graduates take that route. It may be necessary to offer students opportunity to study legal and other developments which are likely to have an impact upon legal practice or the other careers of graduates through the elective portion of the LLB programme.

Is the present core curriculum sufficient for legal practice and the likely destinations of law graduates? Is there a lack of significant commercial elements in the LLB and PCLL curriculum? Should the LLB focus upon comparative law rather than solely upon the common law?

#### *4.5.3 Other issues affecting curriculum development*

Other issues arise for consideration in the preliminary review with respect to constraints that necessarily apply to the development of curricula. These include constraints internal to the universities, including resource and staffing constraints, and external limitations including the sometimes conflicting expectations of external organisations and individuals with a stake in the quality of law graduates and the professional services they will render.

Specific issues that arise under this heading, and in respect to which comment is sought, include

- the processes under which curricula are developed and the forces that shape their development;
- how new topics are identified for addition to the curriculum and the general process of curriculum renewal;
- the quality of the processes for the validation and accreditation of law degree programmes; and
- the library and other support systems for law teaching.

#### *4.6 Teaching methods*

The formal education of law students is provided primarily in a classroom where it is possible to identify four distinct methods of teaching. Although, in practice, one may tend to blur into another, the principles on which they are based differ, and the modes employed will affect the skills and attitudes of students.

##### *4.6.1 Lecture and tutorial teaching*

The standard mode of teaching at both law schools is through lectures and tutorials. Both put some emphasis upon active participation in class, although it is unclear to what extent this is successful. There are initiatives that extend the functions of tutorials.

There may be, in any event, considerable obstacles arising from students' secondary school educational practice with which they are most familiar. It is said that they have, in

the most part, succeeded in school through an over-emphasis on rote memorization and a lack of self-expression and analytical skills. Accordingly, it may not be realistic to expect that any law faculty, over the course of the three-year LLB and a one-year PCLL, can take such students and transform them into mature, independent, world-wise practitioners and be capable of meeting the very high standard expected of a legal practitioner. It is said that students have the mental capacity to think critically, but the system forces them back into a more memorising-of-content approach.

#### 4.6.2 *Interactive teaching methods*

The law schools favour interactive teaching methods in principle. However, there is a problem with interactive teaching if students are passive and do not prepare for class. Also, they need the framework of the law before they can engage in interaction. Without this, the lecturer is forced back into spoon-feeding.

In the consultations it was claimed by some that interactive teaching is not welcomed by students, not so much because of the style of exchange but because the content is not what students want, *i.e.* the discussion is often too advanced. The students have not first obtained the basic principles which enable them to be able to engage in the discussion. Some students reported that they are required to evaluate or make suggestions before they know what the law is.

The issue was raised as to whether students had difficulty in reading printed material. The students consulted agreed that there is difficulty with reading and often they are given a considerable amount to read in English. The teaching of English in schools does not require them to do a lot of reading in English. Over time, most students can overcome this. On the other hand, in first year, sometimes it is extremely difficult and so students give up or lower their standards. The reality is said to be that students do not read ahead for tutorials. But they are given a lot of material to read and there could be up to 100 pages to be read for a class. There is a question of whether this is realistic and, in fact, counter-productive.

How can staff ensure that time spent by students in class preparation pays off in terms of examination results? What incentives can be put in place? Is there greater scope for a problem based mode of teaching in some subjects? Should examinations be constructed so that they more directly test critical thinking and other intellectual skills?

#### 4.6.3 *Clinical legal education*

Clinical legal education has not been a feature of legal education in Hong Kong, but is important in a number of comparable countries. Clinical programmes may take several forms. One is the placement of students in legal offices or government agencies, working under the supervision of legal practitioners and officials. This placement model has been widely adopted in other professional faculties, for example, social work. Another model allows law students to work at legal centres associated with law schools.

A gradual movement into real professional experience may well assist the student to adjust to the realities of professional work. The combination of such experience with later

years of courses may assist students in choosing electives and areas of specialisation. They may in some respects perceive the value of a general grasp of various areas of the law so that their study no longer appears to be book learning which is remote from daily work. Participation by students in legal clinics may also have the benefit of exposing students to the legal problems of the poor.

#### *4.6.4 Monitoring teaching quality*

Student evaluations of teaching are employed at CityU and HKU although their incidence and reporting have not been investigated. There is a suggestion that some evaluation questionnaires pose questions which are not the most relevant or important.

### *4.7 Assessment of students*

#### *4.7.1 Assessment modes*

Assessment is largely by end-of-year examinations but there are some assignments. Generally, the balance between the examination and an assignment is in the ratio of 60/40 or 70/30. Students often prefer examinations. The law schools are trying to use continuous assessment but some courses rely solely on examinations. Departmental grading benchmarks are prescribed to ensure consistency in marking.

What is the possibility - and merits - of shifting the method of teaching indirectly by shifting the nature of the examination from a closed book examination to an open-book and setting questions of a higher order of sophistication and difficulty? Would there be a reflux into student attitudes in the classroom in view of their examination focus?

#### *4.7.2 Quality assurance through external assessment*

Each law course taught at HKU and CityU is externally refereed and assessed, usually by an overseas academic with relevant expertise. At HKU the law faculty is the only faculty that appoints external examiners for every course. The internal examiners draft the examination papers but are required to take into consideration the views of the external examiner before finalising them. The role of the external examiner is primarily at the post-examination stage. All failed and borderline scripts, as well as distinctions (the top 5% of students), are sent to the external examiners for review.

External examiners play a more prominent role in Hong Kong than in some comparable countries. For example, the practice is relatively unknown in the USA, Canada and Australia.

### *4.8 Professional values and ethics: the role of education*

Law teachers must be prepared to engage students in the value-oriented analysis of law and justice and of future professional responsibilities. This includes the development of skills but also involves the development of a feeling for the professional role, for its responsibilities and limits.

It is said that the LLB curriculum needs to inculcate a sense of social responsibility. From summer 2000 HKU has introduced a social justice summer internship programme, a collaborative project with the Department of Social Work and Social Administration. Its

function is to expose law students to socio-legal issues and inter-disciplinary perspectives. Under the programme, a law student will pair up with a social work agency or public authority. At the end of their internship, they will write a joint report on relevant socio-legal issues they encounter in their work.

Should law schools emphasise the ethical instruction of lawyers and law students? Is it important to inculcate in law students a sense of importance of the lawyer's position in society, including the notion that lawyer does not practise simply to make money but has a special role, that ethics in individual professional conduct is important, that lawyers need to be client-focussed and must be held accountable? If so, how might this be done?

A parallel set of issues arise in relation to the responsibility of law faculties to contribute to community understanding of law as well as their traditional role as specialist advisors to legislators and business and professional groups. The traditional specialist role complements the professional legal training that the faculties provide. But do the faculties have a wider social responsibility to contribute to and engage with social understanding of, and commitment to, notions of the rule of law and the role of the legal framework in underpinning social harmony and development? How might the community responsibilities of the faculties in this domain be best discharged, for the benefit of the community but also as a way of modelling appropriate professional behaviour for their students that will shape their own future responsibilities in the community and public interest?

#### *4.9 Selecting students for undergraduate law programmes*

##### *4.9.1 Selection for LLB entry at HKU*

Intake into the LLB at HKU has been reduced to 130 in 1999–2000. In the same year two new undergraduate combined studies programmes were introduced, which had the effect of maintaining entering student numbers. The demand for law programme places is high. HKU reports that it continues to attract students of superior ability relative to those of the HKU student population generally.

##### *4.9.2 Selection for LLB entry at the City University of Hong Kong*

The intake number has been reduced to about 45. The school wishes to raise intake numbers to 60 and eventually go up to 80–100.

Entering students to the LLB come (as to about 50%) through JUPAS and the balance through the non-JUPAS mode – in 1999 most were university graduates. CityU reports that some JUPAS students lack maturity, have a background in rote learning and have English language problems.

##### *4.9.3 Issues raised in the consultations*

Are existing mechanisms for the selection of students, based as they are upon past academic performance, adequate to identify those who should be granted the opportunity of legal education?

The UGC does not have a formal mechanism for receiving the advice and views of the legal profession to assist it in its determination of the number of places that a university may allocate to undergraduate and postgraduate law teaching. Should such a mechanism exist? Which bodies might be represented upon it?

#### *4.10 Staffing and staff development*

The law schools report that the general UGC cutbacks, reductions in faculty operating grants to fund discretionary research allocations centrally administered, and movement to contracts for newer members of staff have impacted adversely on staffing levels.

University policies permit outside practice on the part of law teachers subject to limits and conditions. However, it appears that only a minority of members of the law faculties engage in outside practice, mainly as legal consultants or barristers. Exposure to legal practice enables the teachers in some subject areas to keep in touch with current practical legal needs, and can be conducive to the development of their teaching and research activities. Are there adequate opportunities for acquisition of outside professional experience by law teachers?

#### *4.11 Should there be separate departments of law and professional legal education?*

CityU's School of Law is responsible for teaching both the LLB and the PCLL courses.

HKU has a separate Department of Law and a Department of Professional Legal Education which comprise the Faculty of Law. Each department has a separate Head. There is an issue as to whether this separation serves well the goals of academic and professional education or does it insinuate a distinction and separation between them?

#### *4.12 Proposal of the Chinese University of Hong Kong to offer legal education programmes*

The Chinese University of Hong Kong have proposed to the UGC the establishment of undergraduate and postgraduate programmes in law, including a Bachelor of Social Science in Law and a PCLL or another alternative acceptable to the legal profession.

The proposal by the Chinese University of Hong Kong raises the question whether law should be taught for purposes of professional admission at other universities in Hong Kong that would be willing to offer an LLB programme. A related issue is whether the UGC should allow the universities greater flexibility in the selection of the individual degree programmes which they desire to offer, that is, whether the determination of the individual degree profile of each university should be devolved upon that university rather than be a matter of central determination by the UGC.

## 5 SPACE and the other distance law education programmes

The provision of programmes through the School of Professional and Continuing Education (SPACE) of HKU is a longstanding and distinctive feature of the Hong Kong legal education system.

### 5.1 *The role of SPACE in the development of legal education in Hong Kong*

The Law Division has over 5,000 students registered in courses at law degree, postgraduate and professional levels, many more than HKU and CityU combined. Apparently the majority of these students have no intention of practising law. SPACE offers a range of six programmes.

### 5.2 *University of London Bachelor of Laws (External) preparation courses*

The University of London permits students to undertake its degree externally. SPACE provides preparation courses for their examinations. About 1,000 students are enrolled in this course. Increasingly, they have graduated in another degree. The course may be completed in a minimum of three years, with students taking four subjects per year. Lectures are delivered by visiting academics on a block basis. Fifty hours of tuition are provided in each subject. The intensive blocks comprise 12 lectures within a two-week period. Each lecture is of three hours duration. There are no regular tutorials but weekend seminars are held for all Year 1 subjects. All assessment is by examinations.

London LLB graduates are eligible to apply for the HKU PCLL programme. Those with and Honours 2 (2) degree are guaranteed a place in the SPACE PCLL programme.

### 5.3 *Common Professional Examination of England and Wales (CPE)*

The CPE is one of SPACE's most popular law courses. Approximately 350 students enroll each year. The programme is only available part-time and is of two years duration. It is intended for graduates in a non-law discipline who wish to qualify as solicitors or barristers. It leads to the award of the Postgraduate Diploma in English and Hong Kong Law by Manchester Metropolitan University (MMU).

The course comprises eight subjects taken over two years part-time study. Students receive blocks of lectures of 15 hours from MMU staff at the beginning of the course, given over a period of about ten days. These are followed by two 2½hour lectures and tutorials from local academics and legal practitioners. MMU staff return to give 15 hours of revision lectures around the Easter period.

Assessment is by written examinations and assignments. The examinations are the MMU examinations but are sat in Hong Kong.

Students wishing to proceed to the PCLL must complete two short summer courses in Business Associations and Evidence. Successful candidates who pass all subjects at their

first sitting are guaranteed a place in the PCLL course offered by SPACE in the academic year immediately following completion of the CPE.

SPACE also offers a one-year part-time course for those who wish to convert their CPE qualification into an LLB.

#### *5.4 The Second Bachelor degree in Chinese law*

The second degree program was first launched by Tsinghua University in Beijing in 1998. It aims to allow graduates in non-law disciplines to study through a structured programme so that they can acquire the basic theories, professional knowledge and skills in Chinese Law and become qualified for the practice of Chinese law. Completion of the programme leads to an award of LLB in Chinese law. The course is taught in Chinese and taken on a part-time basis.

#### *5.5 Postgraduate Certificate in Legal Studies (PCLL)*

SPACE also provides a full-time PCLL. A small “half-time” stream of students takes the programme ostensibly on a part-time basis. SPACE does not provide teaching for its PCLL, which is provided by the HKU Department of Professional Legal Education.

#### *5.6 Issues for consideration*

The demand for SPACE courses appears to point to a need for a part-time law course in Hong Kong. There is a social mobility argument in favour of the distance education programmes conducted by SPACE. These programmes provide access to entry to the legal profession for those who cannot undertake full-time study. It might be thought paradoxical that students need to be self-funded to secure this access.

With respect to the curricula taught or supported by SPACE —is it appropriate that study of the laws of England should be a preparation for the practice of Hong Kong law or to understand its legal system? If a CPE is to be accepted as a means of preparation for Hong Kong admission, should it not be a qualification in Hong Kong, rather than English, law? Might not a part-time local LLB achieve better what SPACE is doing?

Does the CPE provide an unfairly easy route to admission, and does it encourage a tendency towards ‘cramming’? How significant is it that it does not provide training in legal skills?

In regard to the particular qualities of graduates of the CPE, some note that CPE-trained students have better communication and inter-personal skills. They are said to be more focussed and dedicated and they know whether they want to be a lawyer (unlike some other law students). But are SPACE trained students so simply because they are more mature and experienced, rather than because the CPE itself makes the difference?

Will the raising of standards of legal education in Hong Kong be undermined by the SPACE programme? A person can do a two-year Diploma in Legal Studies through SPACE without any language or "O" or "A" level requirements. Having done that, they can get then into the CPE and subsequently move on to the PCLL. Do the CPE and LLBs

by distance learning have a significant negative impact upon attempts to raise the overall standard of legal education in Hong Kong?

The numbers studying for the London LLB and the CPE exceed those in the law programmes at CityU and HKU. What impact does this have upon the numbers entering the legal profession? SPACE says that the majority of those who complete the London LLB do not proceed to further study and indeed that its part time PCLL students rarely join the legal profession.

## **6 The practical stage of legal education — the postgraduate certificate in laws**

The one-year PCLL, which follows the undergraduate law degree is offered at HKU and the CityU. At HKU students are enrolled either in the law school or through SPACE. The PCLL is the common qualification for entry into both branches of the legal profession.

The curriculum comprises Conveyancing & Probate Practice (including Landlord & Tenant), Revenue Law, Commercial Law & Practice, Civil & Criminal Procedure, Advocacy, Accounts (half course) and Professional Practice (half course). There are no elective courses.

The issues posed here arise in relation to the present offering of the PCLL following completion of the LLB or its equivalent. However, as noted above at 3.3, it may be preferable to integrate the PCLL into the LLB, perhaps followed by some institutional training in practical legal skills prior or as an alternative to entry into the training contract or pupillage.

### *6.1 Operational and organisational issues*

#### *6.1.1 Should the PCLL continue to be within the law schools?*

Should the PCLL continue to be conducted by the law schools? An alternative would be to have a separate institution, presumably under the control of the profession, responsible for vocational or practical training.

A complicating factor is that the course, at present, is effectively a combination of further education in substantive law *and* practical training. If the PCLL were to be a profession-run course, would it continue to offer substantive law education, bearing in mind that some consider that education to be an important, perhaps the most important, aspect of the present PCLL? Or would it be essentially a practical training course, preparing students to conduct common transactions and/or developing the skills and attitudes needed in practice?

There are overseas precedents for such an arrangement. Some such institutions are run by the profession, others continue to involve the law schools but are principally

controlled by the profession. A number are outside the law schools but have law school representation on their governing bodies. If this arrangement were to occur in Hong Kong, it may well be that such a course would no longer attract UGC funding. If this resulted in significant fees being paid by students, questions of access and equity would arise.

#### *6.1.2 Should both law schools offer the PCLL?*

Might the PCLL be offered at just one of the law schools? The advantages which have been suggested are that –

- standards could be raised, although it is not clear why this would necessarily follow
- it would eliminate the making of invidious comparisons, and thus remove any disadvantage that presently affects CityU graduates
- there would be economies of scale as resources would not be spread so thinly
- the time at present spent on achieving harmonisation or uniformity would be saved.

A suggestion has been made that one university should offer the undergraduate degree and the other the PCLL.

#### *6.1.3 Should the PCLL be lengthened?*

Should the PCLL to be lengthened, say, to two years? The reason would principally be that there is not enough time in the existing PCLL to cover all that needs to be covered. But is the existing time in the PCLL being well spent? Can the length of the PCLL be considered in isolation? It may well be that it needs to be considered along with the length of the LLB course. Would a second year of the PCLL be funded by the UGC? It might be possible to lengthen the PCLL within the same amount of funding. But the only way to do this would be to decrease the annual intake.

#### *6.1.4 Should the PCLL continue to be government funded?*

A matter of recent discussion has been the possibility that the UGC might remove funding from the PCLL as from the 2001-2004 triennium. In the current year, 64% of those undertaking the PCLL are in places that are publicly funded, that is, by the UGC. The possible withdrawal of funding for the PCLL, on the basis of it being a taught postgraduate course, raises the question of whether all or much of what is presently within the PCLL ought to be within the LLB degree.

There are educational questions as to whether a four-year law degree might include much of what is now in the PCLL. International comparisons suggest that much of what is in the PCLL would be found in other countries within the law degree. An argument could be put that Hong Kong should have a four-year law degree, with either the fourth year containing the substantive and procedural law elements in the existing PCLL, or the course restructured to include those elements throughout its whole length. There would then be the question of whether a four-year law degree would receive public funding. In Hong Kong, other professional courses (such as medicine, dentistry and architecture) are all five-year courses.

The existing arrangement has ensured that many students from families that are not wealthy and well-connected have been able to enter the legal profession, thus enabling a more egalitarian profession to emerge. The withdrawal of funding would reverse this trend. Increasing access to the practice of law to a widened stratum of Hong Kong society is an important means whereby the rule of law becomes a more firmly entrenched aspect of the life and culture of Hong Kong.

There is a view that, by raising the present student charge, there could be a larger amount of money available to support the PCLL, which in turn would increase the standard of the programmes offered. However, against this must be balanced the implications of reducing access to a career in the law by those who do not come from wealthy and well connected backgrounds professionally.

A possible alternative to the withdrawal of funding might be a cap on the funding. If this were to occur, and if the length of the PCLL were to be extended, the number of students would need to be reduced.

#### *6.1.5 Should the numbers entering the PCLL be reduced?*

Should the numbers entering the PCLL be reduced? One reason advanced is that there are too many lawyers being produced by the system; more that Hong Kong can assimilate. Another reason advanced is to improve the standard of those undertaking the PCLL programme. Although there might be a direct benefit on standards, reducing numbers could also have some unexpected negative impacts. If school leavers knew that, after finishing a law degree, their chances of continuing on to the PCLL would not be assured, they may well choose not to study law and choose instead another discipline. Thus many good students might be lost to law.

Another proposal is that the minimum standard for entry, from whatever institution (in Hong Kong or elsewhere), ought to be a 2/2 honours LLB degree. But how could a comparison of grades from various institutions be validly made?

Both PCLLs effectively guarantee a place for their own students. This is understandable. But does such an admission policy exclude Hong Kong residents who have received good results from other overseas institutions? Is the guaranteeing of places to local students good for the profession? Should there be a more competitive process for getting into the publicly funded places?

#### *6.1.6 Should there be an English language proficiency test for entry into the PCLL?*

The profession (and others, of course) believe that those practising law in Hong Kong need to have world-class English language skills. Those undertaking such a test would have had three years of tertiary study before undertaking it, and so their capacity to satisfy it should be enhanced.

#### *6.1.7 Does the PCLL adequately prepare those going to the Bar?*

It is said that the PCLL is oriented towards solicitor's work and thus does not sufficiently take into account the needs of students going on to pupillage at the Bar.

The question is whether the PCLL should have a parallel offering of a PCLL for barristers, be more generic, or contain a Bar elective, *ie* some optional subjects directed to work at the Bar.

However, there might not be sufficient students to justify a separate PCLL for would-be barristers. There is also a question of whether students know, at that stage, which branch of the profession they wish to join.

Is the possibility of options within the PCLL more feasible? Those offering the PCLL have had difficulty convincing some of the value of options within the existing PCLL.

#### *6.1.8 The SPACE PCLL*

The SPACE PCLL is effectively little more than a means whereby full fee-paying students can undertake the PCLL at HKU. Its other distinguishing characteristic is that, in an intake every second year, it accepts part time students and thus enables students to undertake the PCLL part time.

SPACE students now are, for most purposes, simply students of the HKU PCLL. This has increased the number of students in HKU classes significantly. While there has been some increase in staffing, the funding provided has been insufficient, it is said, with the result that the staffing has not matched the increase in students. This has had a deleterious effect on the staff:student ratio which, in turn, has meant that teaching and assessment methods have had to be adopted which can cope with large student numbers, but which would otherwise be undesirable.

The SPACE PCLL is the only way to undertake the PCLL part time. There is only a limited number of places available. The question arises whether there would be a genuine demand, and thus a need, for considerably more part time places? If so, there is a question of whether there is a place for a proper part time PCLL, and not just a scheme (as at present) whereby part time students can attend the full time course. A further question is why places in that course should not be UGC-funded.

#### *6.1.9 Should there be a PCLL course specially designed for, and open to, overseas-trained law graduates?*

Overseas trained law graduates may find a place in the HKU or CityU PCLLs but, as those universities give their own students priority, they have to take the few remaining places or pay for a place in the SPACE PCLL. Competition for places in it from overseas law graduates has intensified. Should there be a PCLL specifically for Hong Kong residents who have returned to Hong Kong to seek admission after law studies overseas?

## *6.2 Educational issues*

### *6.2.1 Overloading of the curriculum*

There is a very widely held view that the PCLL curriculum is overloaded. It is said that the reason why so many students find the course difficult is not its intrinsic, intellectual rigour but rather that it is trying to teach and examine too much over too short a period.

Students become preoccupied, not with learning and understanding, but with satisfying the immediate expectations upon them.

It is said that this situation exists because the profession (by which, it appears, is sometimes also meant the judiciary) has an unrealistic and unfair expectation of what those completing the PCLL ought to be able to do.

#### *6.2.2 Negative impacts on student morale*

An overloaded curriculum has a negative effect on student morale and attitude. It is said that students are under enormous and unrealistic pressure as a result of a very heavy workload. This impacts on students' morale.

Perhaps the main reason for the students feeling under such pressure is that failure can have such disastrous consequences because of the rule requiring virtually every subject to be passed, otherwise a student is obliged to repeat the whole year.

#### *6.2.3 The content of the curriculum of the PCLL*

The areas chosen to comprise the curriculum have basically remained unchanged since the establishment of the PCLL. There is a question as to whether it is now timely to reconsider those areas, in the light of the changes which have occurred in the practice of law since 1972.

Should what is taught in Accounts be changed? Would a programme on understanding financial statements be more useful?

Indeed should Accounts be part of the PCLL at all? Alternatively, it could be taught in a special course towards the end of the trainee solicitor contract. Similarly, a special course on accounts for barristers could conceivably be developed and presented during their period of pupillage. In this way, the learning would take place closer to the time when they would put what is learned into practice.

Would a course on litigation practice, instead of the existing Civil & Criminal Procedure, which is considered by some as too academic, be more appropriately taught in the PCLL?

How should the topic of conveyancing be approached? Is it a course on the law of conveyancing or is it a course on the practice of conveyancing, or is it both? If it is both, is it possible to do both in the time allocated to it? The need for such a focus on conveyancing, more so than is the case in most other jurisdictions, may be a result of the nature of land tenure in Hong Kong, where there is little registered title. However, this is likely to change. Should the current curriculum be changed to reflect a likely decline, in the intermediate future, of conveyancing as a central aspect of legal work in Hong Kong?

There is a need for lawyers to have ethical instruction. To what extent should Professional Practice focus on mere obedience to the requirements in the Rules and more on the development of an ethical framework and attitude – hard as that is? Where is the best place, or places, for teaching Professional Practice? One option would be to

introduce it briefly in the PCLL but move the bulk of it to near the end of the trainee solicitor contract or pupillage.

Is the approach taken in the Revenue course appropriate, and indeed should it be in the PCLL at all?

A number of additional subjects have been proposed for inclusion in the PCLL. Examples are advocacy in the Chinese language, PRC practice, matrimonial law and practice, patents, trademarks and copyright, and shipping law. If they were to be included it would, presumably, be at the expense of an existing area of the law. What principles should be applied to determine what should be in the PCLL and what should not?

At present there are no optional subjects in the PCLL. There is a question of whether there is a mismatch between many of the current major issues arising in Hong Kong legal practice, and what is actually taught in the PCLL. With such an intense course, the only way to introduce optional subjects would be to reduce the number of courses, or reduce the content of some of the existing courses, or lengthen the PCLL.

All this raises the question of whether the curriculum is ripe for a major review. The courses which comprise the curriculum were set many years ago.

Any attempt to vary the curriculum, even within an individual course, is very difficult, because of the need to gain the endorsement of a number of bodies. Is this appropriate?

#### *6.2.4 Chinese – language, law and procedures*

It is said that Hong Kong's educational model has been slow to take advantage of the opportunities to understand Chinese law and institutions. With increased international investment on the Mainland, Hong Kong lawyers are in a unique position to offer legal and cultural know-how for a local and global clientele.

#### *6.2.5 The issue of ethical formation*

What responsibility should the PCLL take for the ethical formation of future lawyers? The future preservation of the legal profession depends in a large part on it maintaining a properly based reputation for the highest ethical behaviour.

#### *6.2.6 Work experience within the PCLL*

Would PCLL students benefit from a work placement so that they could gain some experience of legal work? Many of them may never have been in a lawyer's office, and this ignorance of what it is like in practice could affect their capacity to learn.

#### *6.2.7 Is the PCLL practical enough?*

Is the PCLL practical enough? Should there be less emphasis on the teaching of substantive and procedural law, and more on the teaching of common legal transactions and skills?

Greater emphasis might be placed on requiring students to learn some of the law for themselves. If most or all of the teaching of substantive and procedural law were to be shifted into the LLB, the emphasis in the PCLL could be similar to that in most comparable overseas courses where the focus is on the teaching of transactions and skills, indeed the whole process of ‘lawyering’.

#### *6.2.8 Interrelationship with the LLB curriculum*

What should be the PCLL’s interrelationship with the LLB? There is a perception that the PCLL is, or is too much, an extension of the LLB. This raises the fundamental question of its purpose and focus.

Would it be just as easy for it to be the fourth year of the LLB, thus removing unsettling uncertainty as to what the PCLL is meant to be, and how it should be controlled? A person going on to pupillage or a trainee contract might then undertake a shorter, say, purely skills/transactions based course, similar to those in other countries. Such courses are typically of four to six months duration and in some countries substitute for training under the training contract or articles of clerkship. A shorter duration course of training, perhaps in the summer vacation following completion of university studies, is another possibility that is canvassed above at 3.3.

#### *6.2.9 Development of high level skills*

There has been widespread concern expressed about the analytical, problem solving, writing and language skills of many PCLL graduates. At the same time, some in the judiciary and the profession have strongly pressed for the maintenance of a strong substantive law element in the PCLL, and of traditional examinations as the principal assessment method. It may be that those who push for a course with an extensive content of substantive law, and for traditional examinations, and yet also decry the poor analytical, problem solving and communication skills of law graduates, are placing an expectation on the PCLL which is unreasonable and impossible to meet. It could be said that the PCLL courses are caught in a bind, generally not of their own making.

Apart from these skills, there is also the array of work management skills. Should they be in the PCLL or should these skills be developed in traineeship or pupillage?

Essentially, the issue is whether there should be an expectation that the development of skills should be a high priority for the PCLLs and, if there is, how they should be developed and assessed.

#### *6.2.10 Teaching/learning methods*

Because each of the courses making up the PCLL has such heavy content and because, at least at HKU, there are so many students to be taught, the teachers are obliged to choose methods of instruction which inevitably encourage rushed and superficial treatment of the subject matter. The way students will learn, in this situation, is predictable. If the teaching emphasises the delivery of content and the storing up of knowledge, they will adopt learning methods to achieve that – but they are unlikely to develop critical thinking and problem solving skills.

In comparable courses there is a strong focus on requiring students to do what they are being trained to do. This is seen in the Advocacy course at the PCLLs but not much otherwise.

The very heavy examination load (18 examinations in one year at HKU) and the dominant use of multiple choice and short answer questions in most of the examinations, in particular at HKU, also encourage students to rote learn and see their training very much as one of memorising.

There is a strong pressure to increase the research output of the law schools, which means that teachers may have to forego opportunities to provide feedback and other more innovative, but time consuming, ways of teaching because they need to meet their research obligations.

#### *6.2.11 The quality of the teaching*

Are there built into the system ways of maintaining and improving the quality of teaching?

How important is it that teachers have practical experience, and how current should that be – both at time of appointment and throughout the engagement? In most comparable overseas courses, an essential prerequisite for appointment is recent practical experience.

While the lecturers are presumably experts in the areas they teach, tutorials are given by a wider range of academic staff who may or may not have as much expertise, let alone practical experience, in the area in which they are tutoring. To the extent that the PCLL is a practical/vocational training course, this calls into question how effectively these people can provide practical training.

#### *6.2.12 The common examination issue*

A common PCLL examination has been urged and has been a recent contentious issue in Hong Kong. Those urging its introduction argue that it would enable standards to be maintained and raised, and it would put to rest, or highlight, whether there is indeed a difference between the PCLL students in the two universities. As the students would be judged by a uniform standard, they would be directly comparable. The arguments against include that it would stultify curriculum development, that it would really require a common course at both institutions, that it is not undesirable to have two approaches to practical training, that marking is made more burdensome, that its implementation is extremely time consuming, and that it further emphasises a method of examining which is not wholly appropriate for a vocationally oriented course.

The immediate issue is whether there should be a common examination, and further whether it should be confined to the existing courses or extended to the whole PCLL.

Underlying the issue of a common examination is whether there should be a common course. At a deeper level, this issue needs to be examined in the light of the recurring

question of the fundamental purpose of the PCLL. Once that is more explicitly settled, answers in regard to issues such as this may emerge more obviously.

#### *6.2.13 Assessment in the PCLL*

The two PCLLs place considerable emphasis on written examinations, some of which are closed book. CityU does balance the examination mode with considerable emphasis on coursework assessments. Both law schools assess advocacy by student performances.

At HKU, within the examinations themselves, considerable use is made of multiple choice and short answer questions. This is because of the very large number of students that need to be assessed. And, it is said, multiple choice examinations enable the whole course to be covered so that students cannot try to be selective in their preparation. But it would be widely agreed that this is a less than desirable method of assessing in a practical/vocational training course. While it may be appropriate for testing the application of specific aspects of substantive and procedural law to a particular situation, it is a largely artificial way of assessing whether students can actually *do* legal work by undertaking transactions or performing skills, or bringing a number of issues together in order to solve a problem or do some other form of legal work.

This again begs the question as to whether the PCLL is meant to develop the whole capacity 'to lawyer' or whether it is only a preparatory, foundational stage for the training which is to follow – or should follow.

In comparable overseas courses there is generally much more reliance on continuous assessment. This form of assessment is, of course, more time consuming and more subjective, but it does enable the provision of ongoing feedback, which is seen as an essential element of a course which is developing the overall capacity of 'lawyering'.

Are there too many examinations, at least at HKU? The requirement of 18 examinations in one academic year is a heavy one, not only for students but also for the staff who have to mark them. At CityU there are six examinations and five coursework assignments.

Is the current extent of use of external examiners, drawn from the profession, necessary and appropriate? The Law Society strongly supports the role of external examiners.

#### *6.2.14 Should there be some assessment after the PCLL?*

Should all the assessments take place during and at the end of the PCLL, as at present, or might there be value in having some of them at the end of the period of pupillage or traineeship? This would free up some of the time within the one year of the PCLL, and students would be less focussed on preparing for the examinations. The assessments could more closely focus on assessing on what is required at the point of entry to practice.

#### *6.2.15 Possible modularisation of the PCLL*

There is a requirement that students must pass all but one course in order to avoid repeating the whole PCLL. Is this unfair, and unduly and unnecessarily harsh? Does it place enormous psychological pressure on students? Maybe the PCLL could be, in effect,

modularised whereby each course would be regarded as a separate unit. The advantages of modularisation are that students would not need to repeat the whole PCLL should they have failed some of it, and it opens up an opportunity to restructure the PCLL so that students might be able to undertake it in more flexible ways. The negative aspect of modularisation is that it would be counter to other possibilities raised in this paper that the course be more integrated and seen as a whole.

### 6.3 *Underlying and structural questions*

#### 6.3.1 *The overall coherence of the PCLL*

It is said that the PCLL is a subject-centred programme organised around the eight subjects. There is almost no integration across the subjects. Is there a need for an overarching curriculum for the PCLL, with the subjects becoming units in a single integrated course? The eight subjects would no longer stand-alone, like subjects in an undergraduate degree. Teaching and assessment might then span areas of practice.

#### 6.3.2 *What should the PCLL fundamentally be about?*

Many of the issues outlined above ultimately come back to a fundamental question – what is the PCLL about if it were to continue as a programme distinct from the LLB? What is it really intended to do?

Although there is a range of possibilities, essentially there are two basic choices –

- it could be, like the old English course leading to the Law Society's and Bar Finals, an additional year of education in law, but with particular focus on practical aspects, and with greater emphasis on procedural law; or
- it could be a practical training course, distinct from the undergraduate degree, in which it was assumed that students knew the law or how to access it, and which focussed on training in common transactions and skills, with a strong ethical base.

At present it is more the former, with a smattering of the latter.

In support of the former, there is a strong argument that the PCLL is not a precursor to practice but to entry into pupillage or a traineeship. It is argued that it is in this period that the development of lawyering skills and the capacity to undertake legal transactions is learnt. This approach has a logic to it, but its major defect is that there is a widespread perception that, for many, little or inadequate training takes place during this period, that much of it is narrow, and that it is very variable and unpredictable in its quality. Furthermore, should the development of lawyering skills be left to such a late stage?

Among those who consider that some reform is necessary, there appears to be a view that the existing teaching of substantive and procedural law, based on subjects, would continue *but* with added time devoted to skills teaching and also possibly the introduction of electives – leading probably to a lengthening of the PCLL. In other words, the PCLL would still fundamentally be about teaching a number of subject areas but it would have a greater emphasis on skills – the two foci would more or less sit side by side.

But the second of the two choices listed above approaches the proposed reform more fundamentally, whereby the emphasis would be on the development of the ability of ‘lawyering’. This would start with, and be focussed on, the sort of work that lawyers actually do. The training would involve having students do what lawyers do – the bringing together of knowledge (substantive and procedural), skills and ethical attitudes in order to carry out legal work.

Essentially such a course would be closer to the current LPC or BVC in England, the various PLT courses in Australia and New Zealand and some Canadian provinces.

The course could, of course, attempt to do both – which, it is probably true to say, the PCLL attempts to do at the moment. The difficulty with a dual focus is that confusion arises as to what is expected of the PCLL, as exemplified in the recent debates over the common examination and in responses to other recent attempts at reform.

### *6.3.3 Possible restructuring of the whole post-degree pre-admission training period*

In section 3 a number of models were presented whereby the academic LLB and the professional PCLL might be integrated into one process. Two of those models envisage the possibility of institutional practical legal training in lieu of a training contract (models 3 and 4); alternatively, a short intensive institutional practical legal training course might be taken immediately prior to pupillage or a training contract (model 5).

It is also conceivable that the whole post-LLB vocational preparation phase (presently three years for solicitors and two years for barristers), comprising institutional training and on-the-job training and experience, could be reconceived and redesigned as one period of vocational preparation.

For example, the PCLL could precede *and* conclude the traineeship or pupillage, whereby there could be an initial one semester PCLL programme, followed by a year of pupillage or two years of a trainee solicitor contract, followed by a further one semester PCLL. Or there could be specified modules at the beginning of the traineeship or pupillage, leaving students some choice to undertake the remaining modules at times to suit themselves *during* the remainder of their pupillage or trainee solicitor contract. A more radical option would be simply to require students to undertake all the modules at some time in their pupillage or trainee solicitor contract, but not in any particular order.

These latter options would break the nexus, in the students’ minds, between university and their preparation for practice; it would give them greater flexibility, and they would be able to earn some income during their training, thus helping them pay for their PCLL, whatever the fee might be. But a major benefit would be that the training would take place in the context of work and so students would be better able to understand the training.

While such a restructuring may seem attractive from a training point of view, there could be the very practical difficulty of employers demanding, and feeling entitled to, the full attention of their staff. Would such a training system work in Hong Kong legal practice?

However, it can be asserted confidently that in a number of comparable professions and occupations the mixing of work experience and institution-based education or training is effectively done.

#### *6.3.4 Possible restructuring of the process comprising the LLB degree and the PCLL*

Another proposal would be to integrate practical training into the whole law degree, rather than have it as a separate course at the end of the degree. This would involve, presumably, a separate stream offered by one or both of the law schools whereby, in a four-year degree, students would study the substantive law *and* receive vocational training. In England, this way of conceiving of academic and practical training is permitted in what is known as an ‘integrated course’.

#### *6.3.5 Monitoring and governance of the PCLL*

The PCLLs are, effectively, governed by a number of bodies – by the universities themselves, the ACLE and the JEB. Their power is advisory, but they effectively can govern what is taught and how it is taught at both universities. The JEB feels that it cannot effectively carry out its role, and its Chairman has suggested that a person, perhaps a retired judge, be appointed on a full time basis to be the common examiner. This has not eventuated because of the cost involved. In reality, nowadays, the Chief External Examiner is doing the work which it was envisaged the JEB would do.

The Bar Association and the Law Society also have some power to monitor and control through their representation on these other bodies.

Finally, the external examiners, who are nominated by the professional bodies, play perhaps the most active and direct role in monitoring the course. They have a formal role and informally act as advisers. The Chief External Examiner (a judge) plays a prominent role. He believes the external examiners should play a role in deciding what is taught, or at least the core of it.

Does there need to be a system of governance which is as complex and dominating as at present, or as proposed? Could there be a simpler system of governance in which the various interests in the PCLL were recognised, and appropriate weight given to them in a transparent system?

Would it be appropriate to abolish the JEB and the system of external examiners and have instead a common supervisory board for the PCLLs? This might be the JEB with revised or new terms of reference.

If the JEB were to be reconceived as a PCLL Board, it would continue to have represented on it the various groups with an interest and stake in the PCLL, including of course the profession. Instead of using and expecting the external examiners to act as the ‘quality controllers’ of the PCLL, this board could play that role. However, unlike the existing strong focus on commonality or uniformity between the two PCLLs, the new Board might focus instead on developing high standards which might be met in different, but equally appropriate, ways by the two, or perhaps more, PCLLs.

It may be that the present very strong focus on ensuring commonality or uniformity is deflecting energy away from the more important issue of standards: their maintenance and improvement. In other words, it may be that uniformity has no inherent value in itself; it is only a means to an end.

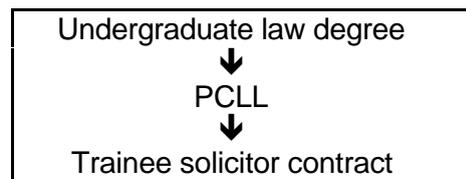
In this way, there would be a single place where the monitoring and supervision of the PCLL took place, there would be appropriate representation to enable informed and inclusive discussion and decision making, and the process would be transparent.

## 7 Trainee solicitors contracts and pupillage

### 7.1 *The current situation*

Barristers must undertake pupillage for 12 months. During the last six months of the period of pupillage, there is a limited right of practice.

As already indicated, the standard route to admission as a solicitor in Hong Kong is —



The trainee solicitor contract is for a period of two years.

There have been ongoing calls for reform of the system, for example, the need for a mechanism to monitor progress of trainee solicitor training, to require assessment of performance at various stages, to give assistance to principals in the provision of on-the-job training, and of a system of early warnings where performance is alleged to be inadequate. The need has also been identified for a system to deal with disputes between trainee solicitors and principals. There has also been recent concern about the monitoring of contracts and in particular whether some principals are providing proper training.

The recent Trainee Solicitors Association report, *Training Tomorrow's Solicitors: a Report*, reiterates some of these concerns. Perhaps the most pertinent are the results in regard to two questions —

Do you believe you are receiving the best training that you could receive from your firm? —60% said no.

Do you believe your firm is meeting the Law Society's requirements for training trainee solicitors? —25% said no.

## 7.2 Issues for consideration

### 7.2.1 *Is there a need for greater clarification of the purpose and role of pupillage or the trainee solicitor contract?*

At present, there is no explicit statement or requirement as to what is to take place in pupillage. This contrasts with England where, by a range of means, standards for pupillage are set and monitored. Would it be desirable that a similar scheme be introduced in Hong Kong? Similarly, while the purpose of the trainee solicitor contract can be implied from the requirements imposed by the contract itself, there is no explicit statement of what role the contract is meant to serve.

Such statements would assist in determining the interrelationship between pupillage and the trainee solicitor contract, on the one hand, and what training should take place in the PCLL, on the other. In particular, it would help clarify the allocation of training responsibilities between the two and how pupillage or the trainee solicitor contract builds on the training received in the PCLL.

### 7.2.2 *Are the lengths of pupillage or the trainee solicitor contract appropriate?*

The lengths of pupillage (one year) and the trainee solicitor contract (two years) are the same as in England, and no doubt this has influenced the length chosen. There is no apparent pressure to shorten the length of pupillage. Two years for the trainee solicitor contract is a relatively long period. It is two thirds of the length of undergraduate education in Hong Kong and twice the length of the PCLL. Is this the appropriate length?

If what takes place in that period is of real value, then the length of the period may be justified. But if the standard of training in that period is poor, there is a real question, in terms of the benefit to the trainee, as to whether such a high proportion of the whole continuum should be devoted to the trainee solicitor contract.

Two years allows time for rotations through various sections of a firm, but it is not clear how many firms have a rotation system.

### 7.2.3 *Should there be systems to monitor the quality of pupillage or trainee solicitor contracts?*

The Bar Association, in annexes to its Code of Conduct, sets out duties of, and guidelines for, pupil masters and pupils, as well as a practical guide to pupillage and limited practice. Also set out are suggested minimum pupillage requirements. Pupils are expected to keep a logbook in which to note compliance with these minimum requirements, and pupil masters so have regard to the details in these logbooks when certifying whether a pupil is suitable to commence limited or full practice. There is a question as to whether the Bar itself should monitor compliance with the guidelines and minimum requirements. In England, as well as quite explicit requirements, there is a system of monitoring compliance with them. Would it be appropriate to introduce this aspect of the English scheme in Hong Kong?

Is it now appropriate to monitor more closely the trainee solicitor system? Should there be, for example, a requirement that reports be lodged during the period of the contract

rather than only at the end? Would it be appropriate for some spot inspections to be made? Generally, does there need to be more regulation of principals?

*7.2.4 Should the trainee solicitor contract or pupillage period be preceded by an examination?*

Should a standard for entry into a trainee solicitor contract or pupillage be set by means of an entry examination? The Law Society's *Position on Legal Education and Training* states that it "will consider establishing its own Final Examination if it comes to the view that the assessment standards in the PCLL course do not achieve the high standards expected of trainee solicitors in Hong Kong".

*7.2.5 Should the trainee solicitor contract or pupillage period be followed by a final examination?*

The trainee solicitor contract is the last link in the chain prior to admission and pupillage is the last link prior to active practice as a barrister. Should there be an examination at the end of traineeship or pupillage? While this may seem attractive as a means of ensuring ultimate quality, what would it test? If it were purely another PCLL type examination, *ie*, a test of substantive knowledge, how could it test the outcomes of the type of training which should be provided in pupillage or traineeship?

*7.2.6 Should there be a system to regulate pupillage?*

During the consultations there were no calls for reform of the system of pupillage. In England, there is a quite extensive scheme governing pupillage. Might a similar scheme appropriately be adopted in Hong Kong? This might include means whereby pupils gained a sufficiently wide range of experience in areas of practice and in the skills of a barrister. There is also the possibility of a programme of preparation of pupil masters to enable them to perform their training role more effectively.

*7.2.7 Are there too many firms not providing proper training for trainee solicitors?*

It is said that the standard of training provided is very variable; indeed the standard of training provided under many trainee solicitor contracts is of considerable concern. This is reinforced by the results from the Trainee Solicitors Association's recent survey. This raises questions of what might be done about it. Some of the suggestions made over the last few years have been that —

1. prospective principals be negatively vetted, *ie*. that they be checked to ensure there is nothing negative reported about them at the Law Society;
2. principals be obliged to give an undertaking *to the Law Society* that they will provide proper training, in addition to their obligations to the trainee under the contract;
3. a principal be permitted to have only one trainee at a time; and
4. there be a monitoring system to detect instances of inadequate training during the two-year period, rather than allow these inadequacies to come to light only at the end of the two-year period.

*7.2.8 Should there be prerequisites for principals wishing to take on trainee solicitors?*

Should there be further prerequisites for principals wishing to take on trainee solicitors, beyond those already in place? It might be appropriate that not all solicitors be entitled to take on trainee solicitors. There could be a requirement that a solicitor could only be a principal if he/she had undertaken a programme of preparation for would-be principals. Principals could also be required to give an undertaking to the Law Society that they will provide proper training. If there were to be such undertakings, should their breach result in disciplinary action? Should principals only be permitted to have one trainee solicitor at any one time? Would it be appropriate to have the system which now applies in England whereby a firm is authorised to be a 'training establishment' and one partner in the firm is nominated to be the 'training principal'?

*7.2.9 Does the system of trainee solicitor contracts mean, in effect, that the profession is replicating itself?*

The type of work that newly-admitted solicitors are able to do is a product, to a large extent, of what they have learnt in their training contract. The marked prevalence of conveyancing in the Hong Kong profession has meant that many trainee solicitors have spent much of the time in their trainee solicitor contract doing conveyancing. The effect of this is that, when they move on to practise as solicitors, they are really only qualified for conveyancing work. It could be said that reliance upon the trainee solicitor contract scheme has the consequence that the profession tends to replicate itself and its existing skills base.

*7.2.10 Should trainee solicitor contracts be abolished?*

There is no apparent pressure from within Hong Kong for trainee solicitor contracts to be abolished and indeed there is widespread acceptance of them. It is said that having trainee solicitor contracts reinforces the concept of a profession which has accepted a corporate responsibility to train its new members. There is much to be said for this concept.

On the other hand, there is a widespread view that, for many trainees, very little training takes place in the trainee solicitor contract and, to the extent that it does, it is largely self-taught.

In many instances, trainee solicitors are 'thrown in at the deep end' and expected, for all intents and purposes, to operate as solicitors. They learn through trial and error but their situation is not one where it could be said training is taking place. In other instances, the trainees are being used for clerical or repetitive work, learning little of legal practice. No attempt is made to train them but simply use them as 'cheap labour'. The question can be asked why should the situation be described as one of training and be governed by a training contract if the reality differs from its depiction.

Of course, there is also the question, posed above in models 3 and 4 at 3.3, as to whether the training objectives of the trainee solicitor contract might not be met equally well by institutional skills training programmes as provided in some comparable jurisdictions or by examination alone as in the United States.

## **8 Postgraduate programmes and research**

Postgraduate programmes and research are integral elements of a modern law school's activities. Postgraduate programmes extend and complement teaching at the undergraduate level and permit law graduates, particularly those less established professionally, to acquire the knowledge and skills necessary for their professional roles and aspirations.

Research degrees have the same function although they have the additional role, central to the university's long-standing mission, of generating new knowledge and understanding of phenomena as well as transmitting that knowledge. Research activity of academic staff operates through, but also independently of, postgraduate research student supervision.

### *8.1 Postgraduate coursework programmes*

The growth in complexity of legal education, the specialisation of legal work, and the development of new areas of legal work, have increased pressure for postgraduate coursework programmes to develop further the skills and knowledge of law graduates. Such programmes also serve to strengthen general intellectual formation and knowledge acquisition in areas of study not covered in undergraduate programmes. In Hong Kong there is particular interest in postgraduate teaching of Chinese law and related links and study opportunities with Chinese universities.

With China's prospective accession to the WTO, there is the risk that Hong Kong may lose its competitiveness as foreign lawyers will be able to establish practices more easily in China, without the current strict licence system, and Chinese lawyers who are trained overseas may return and work in the Mainland. Lawyers in Hong Kong, if they are to continue to play the role of a bridge between the outside and Mainland China, need to be well equipped in Chinese law and with comparative law perspectives.

### *8.2 Issues in postgraduate coursework programmes*

#### *8.2.1 Motivation for study*

Some people may undertake the LLM for credentialism purposes, but others want to learn something of value to them in their careers.

#### *8.2.2 Teaching methods*

Students may be more willing to speak up in postgraduate classes. One reason for this may be that they are not competing with each other any more.

#### *8.2.3 Assessment*

There are mixed feelings on the part of students about the requirement to complete research papers, usually of about 8,000 words, as the primary mode of assessment since most are part-time and find it difficult to undertake research. Indeed, many students seem to want an examination only and would like to do a research paper in one only of the subjects. This is an inevitable tension between the academic goals of postgraduate programmes and the other claims upon a cohort of mostly part-time students.

#### *8.2.4 Developing research capacity in postgraduate taught programmes*

The demand for instruction in research methodologies and training in social science or empirical research methodologies is likely to increase.

#### *8.2.5 The resource implications of postgraduate taught programmes*

It is said that there is a need for proper funding for postgraduate programmes so that the teaching demands upon full-time staff do not impinge upon their research opportunities and obligations. On the other hand, these new specialist programmes have helped staff in their research profile and, it is said, encouraged them to publish in better journals.

### *8.3 Research*

#### *8.3.1 Research degrees*

The postgraduate taught programmes take their place alongside traditional postgraduate research programmes leading to the postgraduate research degrees such as the PhD and MPhil. In addition, in 1998 HKU introduced the Doctor of Legal Science (SJD) programme.

#### *8.3.2 The significance of staff research activity*

At both law faculties staff write for law journals, author books for scholarly and commercial publishers, organise public lectures, seminars and conferences and produce publications to address important current legal issues and to meet the needs of the legal and wider Hong Kong community. They have also established international links with academic institutions with common activities and shared research programmes.

#### *8.3.3 Issues in research*

##### The pressure of time

Inevitably, the demands of teaching and course preparation will be in contest with the time available for research. Time is a scarce and contested resource in university education. The immediacy of teaching and the conscientious discharge of obligations to students are always a source of tension for academics and for those responsible for supporting an active research culture within law schools. What is distinctive about law is that much research is not dependent upon external research funding but upon access to a good law library and the opportunity to conduct the research. Time is, therefore, for much legal research the crucial resource required.

##### The funding of research postgraduate students

There appear to be particular difficulties in the funding of postgraduate research students in Hong Kong, reflecting the system for distributing postgraduate research places within the universities. That distribution is primarily upon the basis of each department's previous record. Accordingly, for law faculties where numbers of such students have traditionally been much lower than for many other departments, there are particular difficulties in increasing future allocation of places even as demand increases.

The funding of law research under internal research allocations

There is also an internal funding problem for law in that the internal resource distribution formula between faculties favours faculties such as sciences and engineering. Law's multiplier weight for research funding at HKU is 1.0 whereas for many other faculties it is 1.6.

Other initiatives that may sustain and improve research performance

There are a number of initiatives that might be considered by law faculties with the aim of strengthening their internal research culture and performance, including –

- the use of research centres to provide support for individual researchers, increase research profile in desired areas of concentration of strength and generally to maximise research activity as a core element of faculty culture;
- developing performance criteria by reference to which the performance of centres and individuals is assessed;
- encouraging staff participation in competitive grant applications;
- reviewing the priority accorded to research performance and potential in staff appointments;
- developing research groups as internal support systems;
- taking account of research performance in the allocation of teaching responsibilities; and
- targeted teaching relief in order to free time for research.

## **9 The Overseas Lawyers Qualification Examination**

Since 1994 there has been a formal process for admission of overseas lawyers as solicitors in Hong Kong. Under this Scheme, overseas lawyers from both common law and non-common law jurisdictions can be admitted as solicitors in Hong Kong if they fulfil requirements relating to educational qualifications, satisfy minimum practice experience requirements, are of good standing in their jurisdiction of admission, and pass or are exempted from all or part of the Overseas Lawyers Qualification Examination (OLQE). There are also some residency requirements. The Examination has been held once each year since 1995. In 1998-1999, for every ten practising Hong Kong solicitors, there was one foreign lawyer practising foreign law in Hong Kong.

Under amendments made to the Legal Practitioners Ordinance in June 2000, the Bar Council may make rules governing the admission of persons to the Hong Kong Bar on the basis of qualification acquired outside Hong Kong. Rules have yet to be made and it presently appears unlikely that examinations will be conducted before November 2001. Accordingly, the focus of this section is upon the existing scheme and Examination for the admission of overseas lawyers as solicitors in Hong Kong.

### *9.1 The aim of the Examination*

Is it clear what the system, and in particular the Examination, seeks to do? The system seeks to be objective, non-discriminatory and competency-based. The use of an examination would appear to meet that aim. However, there may be value in having a clearer articulation of the purpose of the Examination, both to inform applicants and to

provide a foundation upon which the areas to be tested, the focus of the testing and the standards expected could be based?

### *9.2 The heads chosen to be tested*

The five areas chosen to be tested (Conveyancing, Civil & Criminal Procedure, Commercial & Company Law, Accounts & Professional Conduct and Principles of Common Law) are, on their face, fairly obvious. But do they continue to reflect modern day practice of the law in Hong Kong? The reality might be that those undertaking the Examination will practise in a range of areas other than those tested. If that is the case, is it of concern that there is a mismatch between what is tested (in order to permit entry to practise in Hong Kong) and what is in fact practised? Are there other areas in which the Examination should test?

Some have asked whether the choice of heads gives an emphasis to conveyancing (because there are virtually no exemptions) and, to a lesser extent, criminal procedure, which is not reflected in the type of work many of the candidates will do in Hong Kong. On the other hand, it must be said that they will have an unrestricted right to practise and hence should be able to display competence in more than just those areas in which they plan to practise. Some have lobbied for a restricted practising certificate to be issued which would permit practice in everything other than conveyancing. This is not the practice in other comparable countries where restrictions are placed on practising certificates. In any event, apart from the undesirability of compartmentalising the practice of law into discrete areas of practice, it might be extremely difficult to police such a restriction.

### *9.3 The failure rate*

There is a quite high failure rate in the examination. Although the system scrupulously seeks to ensure fairness could there be a perception, albeit completely incorrect, that such a failure rate reflects a restriction on entry to the profession?

### *9.4 The administration of the scheme*

The scheme is administered by the Law Society. There is a question whether an admission board, comprising representatives from the profession, judiciary, law schools and perhaps others, as in Australian jurisdictions, might control the various aspects of testing for admission; including the examination of overseas qualified lawyers.

## **10 Teaching law to students in university courses other than law**

There is a considerable body of law teaching being undertaken in Hong Kong for those who are not preparing for the practice of law. The review is not concerned to evaluate these programmes. Some of the teaching is being undertaken by staff of the law faculties of CityU and HKU. Other law teaching is conducted by business law and other departments of other Hong Kong universities.

Courses taught in these departments and law faculties produce graduates who meet commercial and social needs for services with a legal component but which do not require (or receive) the services of a fully qualified lawyer. These courses are part of a new direction in Hong Kong and an important dimension of the community's capacity to understand law and legal system and to assist in the civil society that it sustains.

#### *10.1 Non-LLB programmes and courses taught by CityU and HKU law faculties*

At CityU there is a very considerable body of service teaching by the staff of the School of Law. The movement towards combined studies programmes extends Law Faculty involvement in teaching programmes outside the straight LLB degree.

The HKU Faculty of Law does no service teaching. However, it has introduced combined studies programmes in its Bachelor of Social Sciences (Government and Laws) and Bachelor of Business Administration (Law) degrees and has proposed new combined programmes in Civil Engineering and Law, Law and Information Technology, and Surveying and Law.

#### *10.2 Teaching programmes offered outside law faculties*

The law teachers consulted thought that there was great need for legal education for non-lawyers. There is a considerable body of law teaching being conducted in aid of business and other programmes of study.

#### *10.3 Issues for university law teaching offered outside law faculties*

There might be benefit from increased portability of credit for all law courses, both between Bachelor of Business Administration programmes and into the LLB programme. At the moment, there is no system of credit transfer or portability between institutions and programmes. Is this a major institutional weakness?

Students, because this is their first degree, might need help to relate academic problems to reality. Most examinations are in English but most classes are in Cantonese. This reflects —and can present —difficulties in communication and assessment.

#### *10.4 Diploma in Legal Studies offered by SPACE*

This law teaching programme does not, of itself, qualify for admission to the PCLL and thereby to professional qualification. However, completion of the two certificates that comprise the major part of the Diploma entitles a person to undertake the Common Professional Examination. Thus, study for the Diploma is of value to those who do not have a university degree (the prerequisite for admission to the CPE programme) and who wish to seek professional qualification. This programme, therefore, has particular significance for professional as well as community education.

## **11 Continuing professional development**

Continuing legal education programmes are provided for both solicitors and barristers. The Bar Association has recently introduced an extensive programme of, what is called, advanced legal education. As that scheme is new, some of the issues which have arisen in regard to the Law Society's CPD programme are yet to be addressed.

### 11.1 *Ensuring quality*

It is inevitable, of course, that quality will vary as between programmes, particularly when so many are being offered. At the moment this is self-regulating for the Bar. Should there be, at some time in the future, a scheme to monitor and ensure quality? The Law Society has in place a comprehensive system for accreditation of providers and programmes under its CPD system, directed to the monitoring of quality. Are there ways that the system could be made more effective?

### 11.2 *The funding of continuing legal education*

Should CLE continue to be self-funding, which is the standard practice in the other comparable countries? Are there any other means?

### 11.3 *Mandatory CLE*

#### 11.3.1 *Should CLE be mandatory?*

There have been some calls for the abolition of the existing mandatory CPD scheme for solicitors. However, it must be said that in other countries, once introduced, mandatory schemes have seldom been abandoned. There appears to be no strong pressure for the Bar's ALE programme to be mandatory.

#### 11.3.2 *Should the existing proposal, that the CPD scheme eventually apply to all solicitors, be reconsidered?*

Again there does not appear to be any real pressure for this.

#### 11.3.3 *Should there be specified programmes which must be undertaken, by all or designated groups of solicitors or barristers, as part of a scheme?*

This was the arrangement under the Law Society's Continuing Legal Education (CLE) Scheme but was abandoned shortly prior to the introduction of the CPD Scheme. By making some programmes compulsory, great pressure is placed on those programmes to be of the highest standard and consistently so. This is hard to achieve and can create negative feelings among those obliged to participate in the programmes. There is, however, an issue of whether this concept should be reintroduced.

#### 11.3.4 *Should the system for accreditation of courses be reviewed?*

All of the Bar Association's ALE programmes are provided by the Bar itself. The issue of accreditation therefore does not arise.

The Law Society seeks to have a CPD scheme which minimises cost to the Society and to the profession, by reducing administratively burdensome and bureaucratic procedures. There is a question as to whether the scheme, as it is now administered, achieves this objective.

All courses need to be accredited in advance of being run. Providers must provide significant details to the Law Society. In view of the very large number of courses on offer, there is a question as to whether this inevitably has become no more than a bureaucratic procedure. Does the amount of work involved achieve the end intended?

The accreditation of providers goes some way towards reducing the amount of bureaucratic procedures. Does this system work well? Does it achieve its intended goals?

#### *11.3.5 Should the system for monitoring of participation in CPD be reviewed?*

Again, this does not yet arise for the Bar as attendance is, at present, voluntary.

Generally, such schemes could be run on an honour basis were it not for the small number who will seek to avoid their obligations. This then leads, in the case of CPD, to the need for attendance rolls, and rules to deal with grey areas such as late arrivals or early departures. Professionals, and indeed all adults, find such requirements intrusive and trivial and they can, in themselves, undo much of the educational good which the scheme seeks to achieve. There is a risk that the system established for monitoring of attendance can overwhelm the scheme's educational objectives.

In the case of the Law Society's CPD scheme, is the system for the monitoring of compliance by solicitors too complex, demeaning and ultimately ineffective? Could the scheme be a self-regulating scheme, with practitioners not being required to sign in, etc.?

#### *11.4 Re-skilling for future practice*

Could systemic training be provided to enable lawyers once in practice to re-engineer their careers and adapt to new areas of practice? How might this be done? Continuing professional development is not really set up in a systemic way to deal with this. In other areas of endeavour, for example manufacturing industries in some countries, this re-skilling has been implemented over the past 15 years or so. There is a question of whether the legal profession could also develop a way to deal with this problem. It is undoubtedly a major issue facing many of its members.

#### *11.5 Continuing legal education as part of the legal education continuum*

The contemporary approach is to see learning as being a lifelong process and for individual components, in particular the LLB and PCLL, as being but parts of a continuum which extends into and throughout professional life. If this approach were to be adopted in Hong Kong, it may be that some education, which might otherwise be seen as being part of the LLB or PCLL, could occur post-admission. If that were to be done, there would need to be close co-operation between the Law Society, the Bar Association and the law schools. Is it now appropriate to consider this approach in Hong Kong?

#### *11.6 The need to develop a culture of lifelong learning*

There is a view that there is a need to develop further a culture of lifelong learning in the Hong Kong legal profession. The question is how this can be done. The existing mandatory scheme goes some way to reinforcing lifelong learning in a structured way. But the question remains as to how it can become a more ingrained part of the professional culture.

#### *11.7 The prospect of the Bar and the Law Society working together more closely*

The Law Society has a highly developed CPD programme, and the Bar is now developing its own ambitious ALE programme. The issue arises whether, in the area of CLE, the

two branches of the profession might work more closely together in order to benefit from the synergies which this would generate.

There are some programmes which are specific to barristers, and others which would only be of interest and value to solicitors. But, there are still many areas and aspects which are of mutual interest and value. The question is whether there would be educational, administrative, financial and perhaps other benefits if the two branches of the profession were to work together on educational programmes and, indeed, were to be educated together.

## 12 The system of regulation of legal education

There are two issues —

- how the requirements for those seeking admission to practice should be best established and promulgated, and
- how the system should be monitored and regulated.

### 12.1 *The current situation in Hong Kong*

The requirements in regard to the various components of legal education, which are prerequisites for admission to practice, are found in diverse places —

- the core subjects for the law degree are effectively specified by the universities, but not directly by setting them as prerequisites for entry to the PCLL
- the requirements as to the content of the PCLL, having once been set at the time of the establishment of the HKU PCLL, are not specified in any particular rule made by any body
- the requirements for admission as a barrister are specified in the *Legal Practitioners Ordinance*
- the requirements for entry into pupillage are specified by the Bar Association and
- the requirements for entry into a trainee solicitor's contract are specified by the *Legal Practitioners Ordinance* and the Council of the Law Society in the *Trainee Solicitor Rules*.

There is a question as to whether it would be preferable to encapsulate all of the requirements into one statement, possibly in the form of rules made under the *Legal Practitioners Ordinance*.

In regard to the monitoring and regulation of legal education, a number of bodies, as already described, play a role —in particular the ACLE, the JEB and the external examiners as well as, indirectly, the professional bodies. There is a question as to whether the system may be too complex to enable it to remain responsive and dynamic. If this were found to be the case, there is a question as to how the whole might be reformed.

### 12.2 *Ways in which legal education might be regulated or monitored*

There appears to be three general ways in which the regulation or monitoring of the processes leading to admission to practice could be dealt with —

- the professional body/ies might set, control and monitor the requirements for admission to practice;
- there might be a system of diversified control, with various bodies having specified control of parts of the overall system;
- a law admissions body, normally established by statute, sets, and might control; and monitor the requirements for admission to practice.

The second of these appears to be the model which best describes the situation in Hong Kong at present.

If the first of these options were to be pursued, the two professional bodies would specify their own requirements and monitor the system to ensure those requirements had been met. If the second option were to be pursued, the existing system would be retained. Basically, the aim of pursuing the third option would be to have a ‘one-stop-shop’ where policy was made and the system was monitored and regulated. It would provide a body similar to the law admitting authorities in Australia, the Council of Legal Education in New Zealand and the Legal Profession Qualifying Board in Malaysia.

This option might involve the establishment of a Council of Legal Education for Hong Kong. This Council might replace the ACLE, or might be in addition to the ACLE, which could remain an advisory body to the Chief Executive. The Council could comprise representatives of the judiciary, government, the two professional bodies, those institutions responsible for providing legal education or training, and possibly of the community.

This option could involve the professional bodies and the court relinquishing some of their *exclusive* powers, to the extent that they hold them. The role of a Council of Legal Education might be —

1. To set general policy in regard to all aspects of legal education and training in Hong Kong relevant and leading to admission to practice.
2. To prescribe the academic requirements for admission to practice.
3. To prescribe the vocational training requirements for admission to practice, both institutional and in-training.
4. To prescribe requirements for those from overseas seeking to be admitted to practice in Hong Kong.
5. To set standards for accreditation of providers of academic and practical training, and to accredit them.
6. To monitor the provision of academic and practical training.

The work at present undertaken by the JEB and the other committees which have recently dealt with the common examination question could operate under the aegis of this Council.

There are other possible ways in which a law admissions body might be established.