

Report on the Barristers Qualification Examination 2009

The Barristers Qualification Examination (“BQE”) was introduced to allow legal practitioners qualified in other jurisdictions to enter and practice at the Hong Kong Bar upon passing of the examination.

The sixth set of examinations was held in late October 2009.

Background

Historically, practising barristers qualified in the UK (England and Northern Ireland and as an advocate in Scotland) could be admitted to practice at the Hong Kong Bar.

The Legal Practitioners (Amendment) Ordinance 2000 removed this route for admission for UK barristers, and instead put in place the framework for an entrance examination, under which all overseas lawyers could qualify for eligibility to be called to the Hong Kong Bar.

The regulatory framework of the examination was set out in the Barristers (Qualification and Admission for Pupillage) Rules (“The B(QAP)R”), which came into effect on 28 March 2003.

Under s.4(1)(c) and s.4(2) of the B(QAP)R, overseas lawyers seeking admission to the Hong Kong Bar based upon their overseas qualification must pass the Barristers Qualification Examination (“BQE”) administered by the Bar Council.

The Examination

The examination is divided into 5 papers:

- Paper I: Contract and Tort;
- Paper II: Property, Conveyancing and Equity;
- Paper III: Criminal Law, Criminal Procedure and Criminal Evidence;
- Paper IV: Hong Kong Legal System, Constitutional and Administrative Law, and Company Law; and
- Paper V: Civil Procedure and Civil Evidence; Professional Conduct and Advocacy.

The pass mark in each paper is 50%. Save for Paper III (which is not divided into parts), a candidate must obtain a pass (50%) in each part of an examination paper in order to pass the paper overall.

Generally, candidates are required to pass all the papers they are required to take in one sitting. If, however, they fail no more than 2 papers in any one sitting, they may re-sit those papers, but they must pass the examination within a period of 3 years.

Exemptions

Under s.4(5), unless the Bar Council otherwise determines in a particular case, all candidates who are admitted in a common law jurisdiction are exempted from sitting Paper I.

Further, candidates may apply to the Bar Council for an exemption from sitting a paper based on their previous practising experience in their own jurisdiction. Under s.4 (4), where the Bar Council is satisfied that, by reason of his substantial experience as a practising lawyer in one or more of the areas of law covered by the BQE, a candidate should be exempted from sitting one or more papers, it may exempt that candidate from sitting such paper or papers.

BQE Committee

The Bar Council has set up a Special Committee on the Barristers Qualification Examination to oversee the general operation and running of the BQE.

The Committee is responsible for considering policy matters as they arise and making recommendations to the Bar Council for consideration and ratification. It also has the responsibility of considering the applications for Certificate of Eligibility and exemptions from sitting papers on the BQE, and making recommendations to the Bar Council on these matters.

Membership of the Committee in 2008:

Lawrence Ng (Chairman)
Ambrose Ho S.C.
Joseph Tse SC
Lisa Wong SC
Russell Coleman SC
Juliana Chow
Selwyn Yu
William Wong
Wong Ka-Chun (Director of Advanced Legal Education)

BQE Panels

In addition to the BQE Committee, the Bar Council has set up panels for each of the areas to be examined. The panels are responsible for advising on the syllabus, any changes relating thereto and to comment upon and approve the examination questions drafted by the examiners.

Panel members comprised members of the Judiciary, practising members of the Bar, members of the Department of Justice and from the Law Departments at the local universities. A list of the Panel members in 2009 is shown at the end of this report.

2009 Candidates

In 2009, there were a total of 3 candidates, all of whom were fresh applications. All 3 candidates applied to sit the Examination.

One candidate withdrew from sitting the Examination prior to the Examination date, citing work commitments. A second candidate wrote to inform that he would only be sitting only 1 out of the 3 Papers he/she was required to sit for, this year as he/she did not have time to prepare properly for the Examination.

The matter was considered by the Special Committee on Barristers Qualification Examination. The rules require a candidate to pass Papers I, II, III, IV **at the same sitting** in order to pass the Examination. A candidate, therefore, cannot choose to sit 1 Paper this year and the remainder in the following year(s). If the current candidate chose not to sit for all three Papers in this year's sitting, he/she would be deemed as having failed them.

The candidate was informed of this, but still chose only to sit for one Paper.

Setting and Marking of Examination Scripts

The Bar Council has appointed two examiners for each part of an examination paper. They have been chosen from within the practising Bar and from the Law Departments of the local Universities, based on their experience in practising, teaching and examining in the areas concerned. A list of the examiners is shown at the end of this report.

The Chief Examiner for the 2009 Examination is The Hon. Mr. Justice Waung, Former Judge of the Court of First Instance, HK.

The examiners drafted the examination questions which were approved by the Panel members and Chief Examiner. The examiners had also marked all examination scripts.

Each of the examination scripts was marked by one examiner and then second marked by the other to ensure consistency and fairness. The Chief Examiner also reviewed and adjudicated on the final marks to be awarded to the candidate.

Results

The results from the 2009 BQE are shown below:

(a) By Paper

PAPER	I	II	III	IV	V
PASS RATE	N/A	0%	50%	0%	0%

(b) By Paper per part

PAPER	I		II		III	IV		V		
	Part A	Part B	Part A	Part B		Part A	Part B	Part A	Part B	Oral
PASSRATE	N/A	N/A	0%	0%	50%	0%	0%	0%	0%	0%

We would like to thank the Chief Examiner, The Hon. Mr. Justice Waung, who has generously given up his time to act as Chief Examiner. We would also like to thank the members of the BQE Committee and of the Panels, the Examiners, and Wong Ka-Chun (Director of Advanced Legal Education) for their hard work in administering the examination in 2009.

Lawrence Ng
Chairman

Wong Ka-Chun
Director of Advanced Legal Education
2009

BQE Panel Members

Paper I: Contract and Tort

Gladys Li S.C. (Convenor)
Judith Sihombing
Rick Glofcheski

Paper II: Property, Conveyancing & Equity

Horace Wong S.C. (Convenor)
Malcolm Merry
Eugene Fung
Lusina Ho

Paper III: Criminal Law, Criminal Evidence
& Criminal Procedure

Peter Duncan S.C. (Convenor)
Cheng Huan, SC
John Reading, SC (Formerly of the DOJ)
Peter Ip
Jonathon Acton-Bond

Paper IV: Hong Kong Legal System
Constitutional & Administrative Law

Kwok Sui Hay (Convenor)
James Collins
Peter Wong (DOJ)
Nicholas Cooney

Company Law:

The Hon. Mdm. Justice Kwan JA (Convenor)
Godfrey Lam S.C.
Linda Chan

Paper V: Civil Evidence and Civil Procedure

Kwok Sui Hay (Convenor)
James Thomson
Roger Beresford

Professional Conduct

Simon Westbrook S.C. (Convenor)
John Bleach S.C.

Advocacy

Dep. High Court Judge Carlson (Convenor)
Audrey Campbell-Moffat

BQE Examiners 2009

Chief Examiner	The Hon. Mr. Justice William S.Y. Waung
Paper II: Property, Conveyancing & Equity	Myrette Fok Michael Yin
Paper III: Criminal Law, Criminal Evidence & Criminal Procedure	Raymond Pierce Martyn Richmond
Paper IV: Hong Kong Legal System, and Constitutional & Administrative Law	Andrew S.Y. Li Lin Feng
Company Law	Vanessa Stott Eva Sit
Paper V: Civil Evidence and Civil Procedure	Liza Jane Cruden Eric Cheung
Professional Conduct	Vandana Rajwani Richard Cullen
Advocacy	Paul Shieh S.C. Vandana Rajwani