

**COMPREHENSIVE REVIEW OF LEGAL EDUCATION AND TRAINING
IN HONG KONG
Interim (Draft) Report**

ANNEXURES

List of consultation responses received

1. Initial responses (November 2015-January 2016)

Anonymous response [1]

Budge, John, Chair, Law Society OLQE Committee

Chan, Justice Patrick, Court of Final Appeal (personal submission)

Che, W-H Allen, solicitor, (personal submission)

Chinese University of Hong Kong, Faculty of Law

City University of Hong Kong, School of Law

Clifford Chance LLP, solicitors, (Graduate Recruitment)

Consumer Council, Hong Kong

Department of Justice

Equal Opportunities Commission

Hong Kong Bar Association

Hong Kong Exchanges and Clearing Ltd, Legal Services Department

Hong Kong Shue Yan University, Department of Law and Business

Hong Kong University, Faculty of Law

Hong Kong University, SPACE

Law Society of Hong Kong

Legal Aid Department

McInnis, Dr Arthur, Professional Consultant, Chinese University of Hong Kong (personal submission)

University of Warwick, UK, School of Law

2. Supplementary responses (January-February 2016)

Chan, Justice Patrick, Court of Final Appeal (personal submission)

Department of Justice

Hong Kong Bar Association

Hong Kong Shue Yan University, Department of Law and Business

Joint Response from HKU, CityU and CUHK (Law Schools)

Law Society of Hong Kong

Legal Aid Department

Merry, Malcolm, Chief Examiner OLQE

3. Further CEE-specific responses (May 2016)

Chinese University of Hong Kong, Faculty of Law

City University of Hong Kong, School of Law

Department of Justice

Estate Agents Authority of Hong Kong

Hong Kong Bar Association

Hong Kong University, Faculty of Law

4. Additional interviews undertaken by consultants

Mitchard, Paul QC, Director of Career Planning and Professionalism, CUHK, Faculty of Law

Woon, Professor Walter, Dean, Singapore Institute of Legal Education

Structure of PCLL Courses at HKU, CityU and CUHK

	HKU	CityU	CUHK
Required courses	(45 credits) (5 courses) Civil Litigation	(30 credits) (11 courses) Civil Litigation Practice	(15 Units) (5 courses) Civil Litigation Practice
	Criminal Litigation	Criminal Litigation Practice	Criminal Litigation Practice
	Corporate & Commercial Transactions	Corporate and Commercial Practice	Commercial Practice
	Property Transactions I	Conveyancing Practice	Property and Probate Practice
	Professional Practice and Management	Wills and Probate Practice	Professional Practice
		Professional Conduct and Practice	
		Interlocutory Advocacy and Interviewing	
		Trial Advocacy	
		Mediation and Negotiation	
		Litigation Writing and Drafting	
		Commercial Writing and Drafting	
		Understanding Financial Statements and Solicitors' Accounts	
	HKU	CityU	CUHK
Elective courses	(27 credits) (3 courses) Trial Advocacy	(6 credits) (3 courses) Bar Course	(15 units) (5 courses) Trial Advocacy*
	Personal Injury Litigation	Personal Injuries Practice;	Writing and Drafting Litigation Documents*
	Matrimonial Practice and Procedure	Family Law Practice;	Writing and Drafting Litigation Documents (in Chinese)
	Drafting Commercial Agreements	International Arbitration Practice	Writing and Drafting Commercial Documents
	Listed Companies	Financial Regulatory Practice.	Writing and Drafting Commercial Documents (in Chinese)
	China Practice		
	Use of Chinese in Legal Practice		
	Property Transactions II		
	Property Litigation		

Wills, Trusts and Estate Planning	Foundations in Mainland Related Legal	China Practice
Commercial Dispute Resolution	Transactions	Lending and Finance Corporate Finance
Employment Law and practice		Conference Skills and Opinion Writing*
		Alternative Dispute Resolution

Indicative learner attributes (competencies) (LETR 2013)

Dimension	Attribute
Cognitive	Core knowledge Basic communication skills Information management Abstract problem-solving Applying knowledge to real world situations Using tacit knowledge and personal knowledge Self-directed acquisition of new knowledge Recognising gaps in knowledge Generating questions Using resources and digital literacy Learning from experience
Integrative	Using legal reasoning strategies appropriately Linking legal knowledge and operational understanding of problems Managing uncertainty
Context	Understanding the professional work setting and professional work Office skills Efficiency
Relationship	Interpersonal communication skills Handling conflict Teamwork and collaboration Supervision
Affective/moral	Integrity Independence Emotional intelligence Respect for Clients Resilience Empathy Social Responsibility

Habits of mind	Attention to detail Awareness of limits of own competence Reflection on one's own abilities, thinking, emotions and techniques Willingness to acknowledge and correct errors
-----------------------	---

LETR Table 4.3: Professional competencies in legal services (derived from Epstein and Hundert, 2002)

Law Society of Scotland: PEAT 1 Outcomes (extract)

CORE OUTCOMES**PROFESSIONALISM**

Throughout the PEAT 1 programme the student should understand the importance of:

Methods of assessment

PROFESSIONALISM**The interests of justice and democracy in society***Positive Indicators:*

- Displays an interest in the workings of justice in society.
- Has an ethical awareness of legal practice, and a developing sense of the regulatory framework of professional ethics.

Effective and competent legal services on behalf of a client*Positive Indicators:*

- Updates and expands knowledge of the law, knowledge of legal practice, client-centred practice and management of client service.
- Pays careful attention to standard of detail in legal work.
- Evaluates own client care.
- Appraises new forms of client care and adopts improvements.
- Acts quickly to protect clients and the public from risk.

Best assessed longitudinally throughout the Programme, by more than one assessor, and in more than one assessment, so that a variety of views are obtained under different conditions.

Forms of assessment could include:

1. Client-based long case.
2. Case file review of simulated client file.
3. Portfolio – Self-assessment.
4. Log book/activity log/confidential file.
5. Critical incident review.
6. Peer-review.
7. Transactional Assessment.
8. Tutor Reports.

Continuing professional education and personal development

Positive Indicators:

- Is aware of own strengths and weaknesses and forms plans to develop character, values, knowledge and skills throughout the course.
- Reflects on experiences and mistakes in order to improve future performance.

Diversity and public service

Positive Indicators:

- Shows an awareness of the responsibilities incumbent on the Law Society of Scotland, the Scottish legal profession and the Scottish solicitor in respect of equality and diversity.
- Assists in the training of new lawyers through peer learning and training of undergraduate students or other groups in society.

Trust, respect and personal integrity

Positive Indicators:

- Is honest with others on the course.
- Treats colleagues, tutors, administrative staff and others with civility and respect.

PROFESSIONAL COMMUNICATION

By the end of the PEAT 1 programme the student will have performed effectively in simulated environment to:

Methods of assessment

PROFESSIONAL RELATIONSHIPS AND TEAM WORKING:

Adapt personal style to develop professional relationships:

Positive Indicators:

- Is aware of how personal character, emotion and social relations form professional relations.
- Can adapt character to suit social situations (eg in negotiation).

Listen, give and receive feedback and respond perceptively to others:

Positive Indicators:

- Neither asks questions nor makes comments until speaker has finished.
- Can summarise accurately what the speaker has said without embellishment or omission. Can comment positively and with perception on the performance of others in the group.
- Respects the viewpoint of others.
- Can accept and act upon feedback from others to improve professional practice.

Best assessed longitudinally throughout the Programme, by more than one assessor, and in more than one assessment, so that a variety of views are obtained under different conditions.

Assessment should also be embedded where possible within Programme modules or projects, rather than in stand-alone assessments.

Forms of assessment could include:

1. Client-based long case.
2. Case file review of simulated client file.
3. Portfolio – Self-assessment and peer-assessment.
4. Log book/activity log/confidential file.
5. Critical incident review.
6. Peer-review on collaborative work
7. Collaborative activities that provide the ground for assessment.

Understand the basic dynamics of groupwork:

Positive Indicators:

- Understands own personal style and strengths.
- Makes effort to understand others' styles and their contribution to group dynamics.
- Can communicate this understanding and discuss it with others in a group.
- Can understand the collective competences of a professional group.

Act as a group member:

Positive Indicators:

- Takes personal responsibility for professional tasks.
- Can liaise with others over tasks.
- Can share task information, learning and knowledge.
- Can recognise positive group dynamics and encourage these.
- Is aware of negative group dynamics and can avoid them.

Lead a group effectively:

Positive Indicators:

- Motivates the professional group.
- Organises delegation of tasks.
- Plays to group strengths.
- Is aware of collective competences of the group and maximises these.
- Is aware of risks of groupwork and manages group functions to minimise these.

Appraises and develops their skill at forming and maintaining professional relationships:

Positive Indicators:

- Modifies own practice in the context of feedback from tutors and peers.
- Demonstrates improvement in practice throughout the span of the programme.

<p>TRANSACTIONAL RESEARCH:</p> <p>Gather information relevant to a matter</p> <p><i>Positive Indicators:</i></p> <ul style="list-style-type: none"> - Can obtain factual information and methodically record the varieties of information and their sources (paper document, oral, electronic) for future analysis. - Can plan work to research deadlines. <p>Analyse and prioritise factual issues</p> <p><i>Positive Indicators:</i></p> <ul style="list-style-type: none"> - Can identify gaps, ambiguities and contradictions in information. - Knows how to find further or better information. - Can prioritise legally important facts. <p>Apply legal analysis to fact patterns</p> <p><i>Positive Indicators:</i></p> <ul style="list-style-type: none"> - Is aware of the legal context surrounding facts. - Can deduce legal guidelines and rules from relevant facts. - Can identify and prioritise legal issues raised by facts. - Can determine which rules are clear and which require further legal or factual research. 	<p>Assessment by performance is essential in this skill. It should be in as realistic a situation as is feasible for Providers. Assessment should also be embedded where possible within Programme modules or projects, rather than in stand-alone assessments. The following forms of assessment are recommended:</p> <ol style="list-style-type: none"> 1. Checklist of skills with allocation of marks or standards. 2. Simulated casework research tasks, assessed by tutor. 3. Case file review by tutor. 4. Portfolio, in which students record progress. 5. Open-book examination. 6. Objective structure case examination. 7. Critical incident review
---	---

	<p>Use appropriate legal research instruments, both paper and electronic</p> <p><i>Positive Indicators:</i></p> <ul style="list-style-type: none"> - Locates and uses cases and legislation, standard practitioner texts, periodical literature and the like, using research tools such as digests, citators and electronic tools such as WestLaw and Lexis Nexis. - Keeps a precise research record. - Can identify key research terms. - Knows how to plan a research strategy. <p>Update legal information</p> <p><i>Positive Indicators:</i></p> <ul style="list-style-type: none"> - Uses appropriate updating instruments, both paper-based and electronic to check information currency. <p>Interpret statutes</p> <p><i>Positive Indicators:</i></p> <ul style="list-style-type: none"> - Can identify legislative provisions appropriate to the advice being considered. - Identify and cite correct sections and schedules. - Can interpret provisions within a legislative framework according to task instructions. - Can apply and use it in drafting advice.
--	--



Legal Practice Course Outcomes 2011

Version 2 - September 2011

Contents

Introduction	4
Aims of the course	4
Legal Practice Course Outcomes	4
Stage 1	6
Professional Conduct and Regulation	6
2. The Code of Conduct	6
3. Money Laundering	7
4. Financial Services	7
5. Solicitors' Accounts	8
Wills and Administration of Estates	8
Element 1: Pre-grant practice	9
Element 2: Application for a grant of representation	9
Element 3: Post-grant practice	9
Taxation	10
Element 1: Income Tax	10
Element 2: Capital Gains Tax	10
Element 3: Inheritance Tax	10
Element 4: Corporation Tax	10
Element 5: VAT	11
Core practice areas	12
Business Law and Practice	12
Element 1: Business media	13
Element 2: On-going operations and common transactions	13
Element 3: Stakeholders	13
Element 4: Business accounts	14
Property Law and Practice	15
Element 1: Pre-contract stage	15
Element 2: Binding contract	15
Element 3: After the contract becomes binding	15
Litigation	16
Element 1: Case analysis	16
Element 2: Courses of action and funding	16
Element 3: Procedure	17
Element 4: Civil Litigation and Dispute Resolution	17
Element 5: Criminal Law and Practice	17
Course skills	19
Practical Legal Research	20
Element 1: Legal and factual issues	20
Element 2: Research	20
Element 3: Presentation of results	20
Writing	21
Element 1: Appropriate use of media	21
Element 2: Writing style	21
Element 3: Content	21
Drafting	22
Element 1: Drafting and amending documents	22
Element 2: Style of drafting and amending	22
Element 3: Explaining and editing	22
Interviewing and Advising	23
Element 1: Interviewing	23
Element 2: Advice and follow up	23
Advocacy	24
Element 1: Case analysis and preparation	24

Element 2: Oral presentations	24
Stage 2	25
Introduction	25
Legal Practice Course Elective Outcomes.....	25
Statement of Outcomes.....	25
Appendix.....	28
Preliminary knowledge	28
Teaching and Learning requirements	28
1. Notional learning hours.....	28
2. Face-to-face teaching and learning	29
3. Allocation of notional learning hours: minimum requirements	29
4. Allocation of notional learning hours and flexibility	30

Legal Practice Course

Outcomes 2011

Introduction

This document sets out the outcomes for the Legal Practice Course (the 'course'). On successful completion of the course students will have reached a significant stage in the framework of their training towards becoming a solicitor. They will have begun to develop many of the areas of knowledge, skills and understanding expected of a newly-qualified solicitor.

The Legal Practice Course comprises two stages. Students will need to pass both stages of the course to satisfy the requirements of the Training Regulations.

Aims of the course

The aims of the course are to:

1. prepare students for work-based learning
2. provide a general foundation for practice.

Legal Practice Course Outcomes

At the end of the course, successful students should be able, under appropriate supervision, to:

1. research and apply knowledge of the law and legal practice accurately and effectively
2. identify the client's objectives and different means of achieving those objectives and be aware of
 - the financial, commercial and personal priorities and constraints to be taken into account
 - the costs, benefits and risks involved in transactions or courses of action
3. perform the tasks required to advance transactions or matters
4. understand the key ethical requirements contained in the SRA Principles of Regulation and Code of Conduct, understand where these may impact and be able to apply them in context
5. demonstrate their knowledge, understanding and skills in the areas of:
 - Professional Conduct and Regulation
 - the core practice areas of Business Law and Practice, Property Law and Practice, Litigation and the areas of wills and administration of estates and taxation

- the course skills of Practical Legal Research, Writing, Drafting, Interviewing and Advising, and Advocacy. Students should also be able to transfer skills learnt in one context to another;
6. demonstrate their knowledge, understanding and skills in the three areas covered by their choice of electives, and
 7. reflect on their learning and identify their learning needs.

Note: Before starting the course, students will be expected to have a basic level of Preliminary Knowledge and Skills. See Appendix.

Stage 1

Stage 1 comprises of the following:

- **Professional Conduct and Regulation**
- **Wills and Administration of Estates**
- **Taxation**
- **the Core Practice Areas – Business Law and Practice, Property Law and Practice, Litigation**
- **Course Skills**

Professional Conduct and Regulation

On completion of Stage 1 students should be able to identify and act in accordance with the core duties of professional conduct and professional ethics which are relevant to the course.

1. The Principles

By the end of Stage 1, a successful student should be familiar in general with the concept of outcomes focussed regulation as applied to the solicitors' profession, and in particular with the mandatory SRA Principles, including the requirements imposed on solicitors to:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow their independence to be compromised;
4. act in the best interests of each client;
5. provide a proper standard of service to their clients;
6. behave in a way that maintains the trust the public places in them and in the provision of legal services;
7. comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner;
8. run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run their business or carry out their role in the business in a way that encourages equality of opportunity and respect for diversity;
10. protect client money and assets.

2. The Code of Conduct

(a) Duties and responsibilities owed to clients

By the end of Stage 1, a successful student should be able to demonstrate an understanding of and ability to apply the Principles and the Code of Conduct to issues and situations relating to work likely to be encountered by trainee solicitors including:

- Client care
- Equality and diversity
- Conflicts of interest
- Confidentiality and disclosure
- The client and the court
- The client and introductions to third parties

(b) Running of the business

By the end of Stage 1, a successful student should understand the organisation, regulation and ethics of the profession and in particular should be familiar with the requirements of the Principles and the Code relating to:

The management of the solicitor's business
Publicity
Fee sharing and referrals

(c) Interacting with the Regulator

By the end of Stage 1, a successful student should have knowledge of the requirements imposed by the Principles and the Code regarding the solicitor's relationship with the Regulator.

(d) Duties to others

By the end of Stage 1, a successful student should understand the responsibilities imposed by the Principles and the Code with regard to dealing with others, and in particular:

The solicitor's relations with third parties
The provision of services by a solicitor through separate businesses

3. Money Laundering

By the end of Stage 1, a successful student should:

1. be familiar with the legislation, including the international context;
2. be able to recognise circumstances encountered in the course of practice where suspicion of money laundering should be reported in accordance with the legislation, with particular reference to those types of legal work covered by Stage 1.

4. Financial Services

By the end of Stage 1, a successful student should:

1. understand the purpose and scope of financial services regulation
2. understand the financial services regulatory framework in general (including authorisation), and how it applies to solicitors' firms
3. recognise when relevant financial services issues arise
4. be able to apply financial services provisions to the types of work covered by the course
5. be able to identify and find appropriate sources of information on financial services.

5. Solicitors' Accounts

By the end of Stage 1, a successful student should understand the way in which the SRA Principles apply to the handling of client money, with particular regard to the requirements for solicitors to:

protect client money and assets;
act with integrity;
behave in a way that maintains the trust the public places in the solicitor and in the provision of legal services;
comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner; and
run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles

By the end of Stage 1, a successful student should have a basic understanding of the Solicitors Accounts Rules 2011, including the requirements to:

- (a) keep other people's money separate from money belonging to the solicitor or the solicitor's firm;
- (b) keep other people's money safely in a bank or building society account identifiable as a client account;
- (c) use each client's money for that client's matters only;
- (d) use money held as trustee of a trust for the purposes of that trust only;
- (e) establish and maintain proper accounting systems and proper internal controls over those systems to ensure compliance with the rules;
- (f) keep proper accounting records to show accurately the position with regard to the money held for each client and trust;
- (g) account for interest on other people's money in accordance with the rules;
- (h) co-operate with the SRA in checking compliance with the rules; and
- (i) deliver annual accountant's reports as required by the rules.

And should be able to:

1. Recognise, record and interpret receipts into and payments from office and client accounts as well as transfers between office and client accounts and between two client accounts;
2. Prepare a simple statement for clients on completion of a matter.

Wills and Administration of Estates

On completion of Stage 1, students should have a general overview of the content, format and validity of wills, obtaining grants of representation and administration of an estate and should be familiar with the purpose and general structure of the relevant documents and should be able to:

1. use the legal knowledge, skills, procedures and behaviours appropriate to the client
2. identify the client's goals and alternative means of achieving those goals, and deal appropriately with client care
3. recognise conduct issues and act within the Code of Conduct
4. identify the client's reasonable expectations as to quality and timeliness of service.

Element 1: Pre-grant practice

Students should understand:

1. validity, revocation and alteration of wills and codicils
2. total and partial intestacy
3. identification of property passing by will, intestacy or outside of the estate
4. valuation of assets and liabilities and the taxable estate.

Element 2: Application for a grant of representation

Students should understand:

1. the necessity for and main types of a grant
2. the powers and duties of personal representatives and their protection
3. the main types of oath for executors or administrators.

Element 3: Post-grant practice

Students should understand:

1. collection and realisation of assets, and claims on the estate
2. raising funds and the payment of inheritance tax and debts
3. pecuniary legacies, vesting of gifted property in the beneficiaries entitled and distribution of the residuary estate.

Taxation

On completion of Stage 1, students should have a sufficient grasp of tax law to enable them to understand the impact of taxation on the areas covered by the course and should be able to:

1. use the legal knowledge, skills, procedures and behaviours appropriate to the client;
2. recognise conduct issues and act within the Code of Conduct;
3. identify the client's reasonable expectations as to quality and timeliness of service.

Element 1: Income Tax

On completion of Stage 1, students should:

1. understand the main features of the income tax system including: total income; personal allowances; calculation of income tax liability
2. understand the distinctions between taxation at source and direct assessment and the taxation of income from investments and interest
3. appreciate the existence of anti-avoidance legislation such as the rules relating to gifts and settlements.

Element 2: Capital Gains Tax

On completion of Stage 1, students should understand:

1. the main principles of capital gains tax, including the charge on the disposal or deemed disposal of assets and the calculation of chargeable gains
2. the main exemptions and reliefs from capital gains tax.

Element 3: Inheritance Tax

On completion of Stage 1, students should:

1. understand the principles relating to the charge to tax: on death; on immediately chargeable lifetime transfers; in relation to potentially exempt transfers; on gifts with the reservation of benefit
2. be familiar with: payment of tax due; exemptions and reliefs; the principle of cumulation; valuation; accountability and burden; anti-avoidance provisions.

Element 4: Corporation Tax

On completion of Stage 1, students should understand the principles relating to the charge to tax and charges on income.

Element 5: VAT

On completion of Stage 1, students should understand the basic principles of VAT including: registration of taxable persons; taxable supplies; input and output tax; standard and zero rating; exemptions.

Core practice areas

On completion of Stage 1 of the Legal Practice Course, a successful student, under appropriate supervision, should be able to progress basic transactions or matters in the context of:

- the core practice areas of Business Law and Practice, Litigation and Property Law and Practice including elements added by the provider to a core practice area which are in addition to the minimum requirements specified for the core practice area;
- elements included by the provider in Stage 1 which are in addition to the minimum requirements specified in these outcomes for Wills & Administration of Estates or Taxation.

Students should be able, in relation to transactions and matters which they undertake, to:

1. use the legal knowledge, skills, procedures and behaviours appropriate to each client and each transaction matter
2. identify the client's goals and alternative means of achieving those goals, and deal appropriately with client care
3. investigate and identify the relevant facts, research and identify the relevant legal issues, and advise the client on the legal consequences
4. identify the overall nature of the transaction or matter, then plan and progress that transaction or matter through a series of steps and decisions including, where appropriate, drafting documentation
5. recognise conduct issues and act within the Code of Conduct

Business Law and Practice

On completion of this core practice area, students should:

1. understand the nature and structure of the different business media and be able to select an appropriate medium and structure to meet the client's commercial requirements and to advise on the legal and taxation implications
2. be able to progress basic business transactions arising during the life and development of a business
3. understand the interests of different parties involved in the business including directors, shareholders and creditors of a business.

Students should also be able to:

4. interpret and apply primary source materials, constitutional documents and other relevant agreements
5. identify conduct and regulation issues, such as conflicts of interest and FSMA, as they arise in the context of relevant transactions and act within the Code of Conduct
6. draft the relevant documentation and prepare the appropriate forms and filings.

Element 1: Business media

Students should:

1. be able to advise the client as to the advantages and disadvantages of different business media including sole traders, partnership and companies
2. be able to advise on form and legal structure and on the cost, procedures, formalities and taxation implications of setting up and running the business
3. be familiar with the procedures required to incorporate a company and/or form a partnership and understand the approvals, filings and procedures to enable the business to commence operating
4. be familiar with the roles, rights, responsibilities and liabilities of the participants
5. understand the procedures to alter the constitution of a company and to appoint and remove the officers of a company
6. understand how to allot, issue and transfer shares.

Element 2: On-going operations and common transactions

Students should be able to:

1. progress common business transactions and advise and take steps relating to the business's on-going operations
2. advise on entering into contracts on behalf of the business (including issues arising from contracts in which directors have an interest)
3. advise on steps to protect the assets of the business
4. advise on issues arising from basic finance and lending
5. draft notices, agendas and minutes of meetings and complete and file routine statutory forms and maintain and up-date statutory books
6. advise on taxation of profits (income and capital) generated and distributed by the business
7. demonstrate an appreciation of the continuing duties, obligations and liabilities of the business and of its partners, directors and shareholders
8. advise on the options for and claims arising on insolvency, e.g. bankruptcy, winding up and administration
9. draft and review documentation to give effect to transactions.

Element 3: Stakeholders

Students should:

1. understand the different interests of parties involved in the business including the company, directors, shareholders and creditors of the business
2. be aware of potential conflicts between the different parties
3. understand the importance of knowing the client.

Element 4: Business accounts

Students should understand the basic principles of business accounting and should be aware of the need to interpret business accounts to ensure clients are appropriately advised. In particular, students should:

1. understand the terms used and basic accounting concepts
2. be familiar with how accounting data is used to prepare a profit and loss account and a balance sheet
3. understand the construction of and be able to analyse and interpret a simple balance sheet and profit and loss account of a sole trader, partnership and limited company
4. understand the nature of shareholders' funds.

Property Law and Practice

On completion of this core practice area, students should, in the context of domestic or commercial transactions or both, and in relation to freehold and leasehold property:

1. appreciate the nature of a property transaction
2. be able to identify and perform the critical steps in a transaction
3. be aware of conflicts of interest that may arise when acting for more than one party in a property transaction
4. understand the requirements of lenders and the need to consider money laundering issues
5. have a sufficient grasp of the tax aspects of a property transaction, including Stamp Duty Land Tax.

Element 1: Pre-contract stage

Students should be able to:

1. take preliminary instructions and advise on client care
2. identify the steps needed to raise and the issues arising from pre-contract enquiries and pre-contract searches
3. deduce and investigate title as appropriate to the transaction
4. report on the transaction to the client
5. decide, with the client where appropriate, what action needs to be taken and identify what action (if any) the client has to take
6. analyse and draft a contract (and constituent clauses).

Element 2: Binding contract

Students should understand when the contract becomes binding and should appreciate the need to:

1. advise the client on the terms of any offer of finance and ensure that adequate finance is available before committing the buyer to the contract
2. select a method of making the contract binding appropriate to the transaction.

Element 3: After the contract becomes binding

Students should be able to:

1. deal appropriately with the deposit, obtaining undertakings and insurances

2. prepare appropriate, clear and precise undertakings
3. draft document(s) (whether paper-based or electronic) necessary to transfer the legal estate
4. report on the title to the lender
5. prepare the mortgage documentation
6. prepare for completion and select a method appropriate to the transaction
7. carry out the completion and the relevant post-completion steps
8. complete the mortgage and protect the lender's security
9. discharge any existing mortgage over the property.

Litigation

On completion of this core practice area, students should:

1. understand the nature of civil and criminal litigation
2. be able to identify the critical steps in the process of litigation.

Element 1: Case analysis

Students should be able to analyse factual material, identify the legal context in which factual issues arise, relate the central legal and factual issues to each other and be able to:

1. identify the elements of selected causes of action and criminal charges
2. identify, analyse and, if necessary, research the propositions of fact going to the elements and be able to identify, analyse, secure and preserve evidence to support propositions of fact
3. identify, analyse and advise on the admissibility and relevance of evidence and assess the strengths and weaknesses of each side's case including, where appropriate, the opponent's evidence.

Element 2: Courses of action and funding

Students should be able to:

1. identify possible courses of action, demonstrate an awareness of the legal and non-legal consequences of selecting a course of action and advise the client on the attendant costs, benefits and risks
2. advise the client on the different ways of funding litigation, including the availability of public funding.

Element 3: Procedure

Students should be able to identify the steps and strategies that need to be taken in the preparation and conduct of litigation.

Element 4: Civil Litigation and Dispute Resolution

Students should be able to:

1. identify the appropriate forum for the resolution of the dispute, including appropriate methods of alternative dispute resolution
2. identify possible cost consequences of different outcomes, the effect of the different costs rules and the impact of the likely costs orders on the conduct of litigation
3. demonstrate an understanding of the Civil Procedure Rules, the overriding objective, and their application
4. demonstrate an understanding of the court's role in the litigation process, in particular the court's case management powers and duties
5. identify steps to be taken prior to commencement and be able to issue, serve and respond to claim forms
6. advise on interim applications, prepare and conduct applications to the master or district judge
7. understand the steps needed to prepare the case for trial and the procedure and evidential issues arising from expert witnesses, witnesses of fact and disclosure, and demonstrate an awareness of the basic elements of trial procedure
8. demonstrate an awareness of the mechanisms which are available to enforce and appeal a judgment
9. prepare the appropriate documentation and draft claim forms, particulars of claim, defences, application notices, orders and witness statements.

Element 5: Criminal Law and Practice

Students should be able to:

1. demonstrate an understanding of the Criminal Procedure Rules, their overriding objective, and their application
2. demonstrate an understanding of the court's role in the litigation process, in particular the court's case management powers and duties
3. demonstrate an awareness of police station representative accreditation schemes, and the court duty solicitor scheme
4. explain the custody, review and detention limits under PACE and the role of the custody officer

5. identify the steps involved in making an application for a representation order
6. identify the steps involved in making or contesting a bail application
7. identify the practical and tactical considerations involved in determining the mode of trial, including an awareness of the range of sentences available, and advise the client accordingly
8. assist in the preparation and conduct of a summary trial, committal proceedings and a trial on indictment.

Course skills

On completion of Stage 1, a successful student should have a basic competence in the course skills and be able to use them effectively under supervision and should:

1. demonstrate an understanding of the principles and criteria that underpin good performance in these skills
2. be familiar with methods of communication and able to choose and tailor the communication form and style to suit the purpose of the communication and needs of different recipients
3. be able to communicate orally and in writing and draft and amend documents in a form, style and tone appropriate for the recipients and the context
4. demonstrate attention to detail
5. be aware of the practical, commercial and personal considerations which should be taken into account
6. recognise conduct issues and act within the Code of Conduct
7. demonstrate sensitivity to issues of culture, diversity and disability in communication with clients, colleagues and others
8. be able to use the skills in combination where appropriate.

Practical Legal Research

On completion of this area, students should:

1. understand the need for thorough investigation of all relevant factual and legal issues involved in a transaction or matter
2. be able to undertake systematic and comprehensive legal research
3. be able to present the results of their research.

Element 1: Legal and factual issues

Students should be able to investigate legal and factual issues and:

1. determine the scope and identify the objectives of the research
2. determine whether additional information is required and identify appropriate sources for factual investigation
3. identify the legal context(s) and analyse the legal issues
4. address all relevant legal and factual issues.

Element 2: Research

Students should be able to undertake systematic and comprehensive research and:

1. identify and apply current case law, statute law, statutory instruments, regulations and rules to the research problem
2. identify, prioritise and use relevant primary and secondary sources
3. locate and update cases and statutes, and use indices and citators
4. use periodicals, digests and standard practitioner texts
5. select and use appropriate paper and electronic research tools.

Element 3: Presentation of results

Students should be able to:

1. keep a methodical, accurate and complete record of the research undertaken
2. draw clear conclusions and identify courses of action
3. present the results of their investigation and research in a way which meets the Course Skills outcomes.

Writing

On completion of this area, students should be able to communicate effectively in writing and should:

1. understand and be able to choose the appropriate method of communication
2. understand and be able to apply the principles of good writing.

Element 1: Appropriate use of media

Students should:

1. understand the appropriate uses of emails, letters, memoranda and other forms of written communication
2. be able to choose the appropriate medium, form and style
3. be able to tailor the written communication to suit the purpose of the communication and the needs of different clients or recipients.

Element 2: Writing style

Students should be able to produce written work which is appropriate for the chosen medium and the recipient and which:

1. uses accurate, straightforward and modern language
2. uses correct spelling, grammar, syntax and punctuation
3. has a clear, logical, consistent and appropriate structure and format
4. has been checked and edited.

Element 3: Content

Students should be able to produce written work which:

1. forms a coherent whole and, where appropriate, advances the matter;
2. addresses accurately and correctly all the relevant legal and factual issues and, where appropriate, identifies practical options including the costs, benefits and risks of those options
3. identifies clearly clients' objectives and priorities, addresses their concerns and carries out their instructions
4. accurately and systematically records a meeting or presentation and its outcomes.

Drafting

On completion of this area, students should:

1. understand the content and requirements of formal legal documents in the core practice areas
2. understand the principles of good drafting and editing
3. be able to explain their own and others' drafting.

Element 1: Drafting and amending documents

Students should be able to draft and amend basic documents or provisions that:

1. demonstrate an understanding of the relevant legal, factual and procedural issues
2. meet all formal legal or other requirements
3. demonstrate a considered choice, use and adaptation of templates or precedents
4. are in prescribed or generally accepted form.

Element 2: Style of drafting and amending

Students should be able to draft and amend documents that:

1. use accurate, straightforward and modern language
2. use correct spelling, grammar, syntax and punctuation
3. are easy to follow, internally consistent and free of ambiguity
4. use recitals, definitions and boilerplate correctly and appropriately
5. have a clear, logical, consistent and appropriate structure, layout and use of numbering and schedules.

Element 3: Explaining and editing

Students should be able to:

1. explain in clear and simple terms the meaning and effect of basic documents and the possible implications for the client
2. review and edit their own and others' drafting to identify and correct omissions, errors and unnecessary provisions.

Interviewing and Advising

On completion of this area, students should demonstrate an understanding of the principles and techniques of the skills of interviewing and advising.

Element 1: Interviewing

Students should:

1. be able to choose an appropriate way to obtain relevant information
2. be able to plan, prepare for and identify the objectives of an interview
3. understand how to conduct an effective interview that elicits the relevant information, allows the client to explain any concerns, anticipates the client's questions and has clear outcomes
4. be able to listen actively and use appropriate questioning techniques
5. be able to establish a professional relationship.

Element 2: Advice and follow up

Students should be able to:

1. advise the client taking into account the client's objectives, priorities and constraints and addressing all relevant factual, practical and legal issues
2. identify possible courses of action, the legal and non-legal consequences of a course of action (including the costs, benefits and risks) and assist the client in reaching a decision
3. identify any further decisions to be made or steps to be taken and manage the client's expectations including likely outcomes and timescales
4. accurately record an interview, advice given orally, decisions made by the client and follow-up steps and, where appropriate, confirm instructions in each case in accordance with the outcomes for Writing
5. identify the circumstances in which to take instructions or seek advice from a supervising solicitor.

Advocacy

On completion of this area, students should:

1. understand the importance of preparation and the best way to undertake it
2. understand the basic skills in the presentation of cases before courts and tribunals
3. be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner.

Element 1: Case analysis and preparation

Students should be able to:

1. identify and analyse the relevant facts, the legal context in which the factual issues arise, and how they relate to each other
2. summarise the strengths and weakness of the case from each party's perspective
3. prepare the legal framework of the case, and a simple narrative outline of the facts
4. prepare the submission as a series of propositions based on the evidence
5. identify, analyse and assess the purpose and tactics of examination, cross-examination and re-examination to adduce, rebut and clarify evidence.

Element 2: Oral presentations

Students should be able to:

1. identify, analyse and assess the specific communication skills and techniques employed by a presenting advocate
2. demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

Stage 2

Stage 2 comprises 3 vocational electives.

Vocational electives

Introduction

This part sets out the outcomes for Stage 2 of the Legal Practice Course: the Vocational Electives (the vocational electives). On successful completion of Stage 1 and Stage 2, students will have completed the Legal Practice Course which is part of the vocational stage of training towards becoming a solicitor.

In order to complete Stage 2, a student must successfully complete three distinct vocational electives. The vocational electives can be undertaken at the same provider as Stage 1, or at one or more different providers.

On completion of Stage 2, students will have begun to develop the knowledge and understanding expected of a newly-qualified solicitor in three distinct areas of practice.

Legal Practice Course Elective Outcomes

At the end of an elective, successful students, under appropriate supervision, should be able in the context of the area(s) of law and practice studied on the elective to:

1. demonstrate their knowledge and understanding and employ the applicable skills in the elective's area(s) of law and practice
2. use the legal knowledge, skills, procedures and behaviours appropriate to each client and each transaction or matter
3. identify the overall nature of the transaction, then plan and progress that transaction or matter through a series of steps and decisions including, where appropriate, drafting documentation
4. identify the client's goals and alternative means of achieving those goals, and deal appropriately with client care
5. investigate and identify the relevant facts, research and identify the relevant legal issues, and advise the client on the legal consequences
6. recognise conduct issues and act within the Code of Conduct
7. identify the client's reasonable expectations as to quality and timeliness of service.

Statement of Outcomes

The provider will produce, for approval by the SRA, a statement of outcomes for each vocational elective using the model of the Core Practice Areas for Stage 1. The statement of outcomes must:

1. explain how the Legal Practice Course Outcomes (page 1) and the vocational elective outcomes will be met in the elective

2. identify the learning objectives of the elective
3. specify the elements of law and practice which will be covered on the elective
4. identify the ethical and professional conduct issues that will be addressed on the elective and act within the Code of Conduct
5. describe how the Course Skills, where appropriate, will be employed by students on the elective
6. where appropriate, explain how the elective will develop the knowledge and understanding developed through Stage 1.

Appendix

Preliminary knowledge

Before starting a Legal Practice Course students will be expected to have a basic knowledge of the seven Foundations of Legal Knowledge as identified in the Joint Announcement¹.

In particular, students will be expected to have a basic knowledge and understanding of the following:

1. the principal EC institutions, sources and interpretation of Community law, the relationship between Community law and National law, and relevant human rights conventions and legislation
2. formation of contracts, formalities of written contracts, general principles concerning implied terms, misrepresentation, discharge and remedies for breach of contract
3. the nature of legal estates and interests, equitable interests, easements, covenants, mortgages, joint ownership, registered and unregistered land (including the registration of charges)
4. the nature of fiduciary relationships and the duties of fiduciaries; the powers and duties of trustees
5. the basic structure of the civil and criminal courts
6. the elements of common offences and causes of action (contractual and tortious), issues affecting who should be the appropriate parties to litigation (e.g. vicarious liability) and common defences to proceedings.

Students will need to have developed oral and written communication skills, interpersonal skills, and the skills of legal analysis and research to a level that will enable them successfully to embark upon the course.

Teaching and Learning requirements

A minimum of 1,100 notional learning hours should be devoted to the study of Stage 1 of the Legal Practice Course and a further 300 hours to the study of Stage 2, the vocational electives (100 hours each).

1. Notional learning hours

The terminology of 'notional learning hours' has been adopted for determining the course study requirements because it is widely used and understood in higher education.

The standard requirement for an undergraduate year is 1200 hours; the higher overall requirement of 1400 hours for this programme reflects the additional expectations for a professional, graduate-entry course.

¹ The Joint Statement sets out the conditions for undergraduate law degrees recognised by the Solicitors Regulation Authority and the Bar Standards Board as satisfying the academic stage of training

'Notional learning hours' are the learning hours that each course provider estimates that diligent students will need to devote to their studies to achieve the Legal Practice Course outcomes on the provider's course(s). Notional learning hours are not the actual time that any particular student needs to spend in order to achieve the outcomes. The actual time will vary according to the student's capability, degree of prior experiential or other learning and the mode of learning.

Notional learning hours include:

- class contact hours
- preparing for class contact
- private study
- e-learning, including on-line teaching sessions and discussion groups
- preparation for formative assessments.

2. Face-to-face teaching and learning

For Stage 1 a minimum of 110 hours must be allocated to 'face-to-face' teaching and learning. For Stage 2 a minimum of 10 hours must be allocated to 'face-to-face' teaching and learning for each vocational elective.

'Face-to-face' teaching and learning requires interaction among students and between students and tutors. Tutors must provide feedback to students on the activities undertaken during the session, to confirm and/or enhance students' understanding of the topics being developed.

The SRA does not wish to inhibit providers' opportunities to develop a range of course structures and to utilise different teaching and learning methods. A minimum face-to-face requirement has been set in order to ensure that all students have some opportunity to meet with each other and their tutors and to undertake activities to develop their team working and communication skills, their ability to relate to other professionals and appropriate attitudes to professional conduct.

The SRA anticipates that many courses will incorporate significantly more face-to-face learning than the minimum required. To provide the maximum flexibility, the SRA will not prescribe when within each stage of the course face-to-face learning is to be undertaken. For the avoidance of doubt, 'virtual' or 'e'-contact will not satisfy this particular requirement.

3. Allocation of notional learning hours: minimum requirements

Of the minimum notional learning hours devoted to Stage 1:

Core Practice Areas

- At least 60% of notional learning hours for Stage 1 must be attributed to the Core Practice Areas of Business Law and Practice, Property Law and Practice and Litigation
- Providers have flexibility to apportion notional learning hours between Business Law and Practice, Property Law and Practice and Litigation, provided that each attracts at least 15% of the overall notional learning hours

- There are no specified learning hours for Wills and Administration of Estates and Tax.

Course Skills

- At least 15% of notional learning hours for Stage 1 must be attributed to the Course Skills
- Providers have flexibility to apportion notional learning hours between the Course Skills as they see fit.

Professional Conduct and Regulation

- Providers will be expected to demonstrate that at least 8% of notional learning hours relate to Professional Conduct and Regulation;
- Providers have flexibility to provide a foundation in the Solicitors' Code of Conduct but must fully integrate conduct in all relevant aspects of the course.

4. Allocation of notional learning hours and flexibility

The Stage 1 Outcomes set out the essentials for every Legal Practice Course but are not exhaustive and do not prescribe the structure of the course. Providers have flexibility within and between the core practice areas and the skills and may contextualise the course for specific kinds of legal practice or markets.

83% of the notional learning hours for Stage 1 are covered by the above specifications with considerable flexibility within and between the core practice areas and the skills. The balance of the notional learning hours may be allocated at the provider's discretion. A course may include additional learning outcomes and elements, that is, subject areas or topics and emphasize one or more aspects, so long as the provider can demonstrate the pedagogic justification for the overall content of the course and use and balance of notional learning and class contact time. (Examples follow)

Example 1:

220 notional learning hours (20%) to Business Law and Practice

165 notional learning hours (15%) to Property Law and Practice

330 notional learning hours (30%) to Litigation

220 notional learning hours (20%) to the Course Skills

165 notional learning hours (15%) to Conduct, Wills and Administration of Estates and foundation Tax.

Example 2:

330 notional learning hours (30%) to Business Law and Practice

165 notional learning hours (15%) to Property Law and Practice

220 notional learning hours (20%) to Litigation

253 notional learning hours (23%) to the Course Skills

132 notional learning hours (12%) to Conduct, Wills and Administration of Estates and foundation Tax.

Providers will be expected to demonstrate and track how each course apportions its notional learning and face-to-face time and will need to provide strong justification for any deviation from these provisions.

Observations on two centralised assessment models

This Annex contains our own summary of analysis of two approaches to centralised assessment that have been attempted in recent years, the first was a pilot programme, developed by the Law Society of Scotland, but never implemented, the second relates to the move to centralised assessment on the English Bar Professional Training Course (BPTC).

1. THE TPC PILOT PROJECT

Between 1998 and 2002 the Law Society of Scotland (LSS) worked extensively on developing a test of readiness for practice, called the TPC – the Test of Professional Competence.¹ The history of this project offers an interesting, and rather neglected, case study of the complexities involved in designing a ‘high stakes’ assessment of professional competence. The test was envisaged by the LSS as a final ‘gatekeeping’ assessment at the end of the traineeship. The test would be pass/fail and pitched to identify those intending solicitors who were not (in terms of competence) ‘fit and proper’ persons to enter the profession.

Unsurprisingly, a primary difficulty encountered by the LSS lay in agreeing both the form and content of the test. As Campbell observes a critical issue in setting a test of professional competence is determining its proper scope. The solicitors’ title (at least in theory) represents the lawyer as, in Campbell’s term, “omnicompetent”. How then does one assess that the trainee has the requisite knowledge to practise in any area? Or is it sufficient to assess in only key areas: ethics, for example, and/or in the reserved areas of practice? What about skills? In short, where does one draw the line?² This is at one and the same time an educational, regulatory and ‘political’ question.

Omnicompetence, in the context of an increasingly specialised and segmented legal services market may be a poor educational and regulatory solution; it may set the bar of competence too widely, and, perhaps by default, too low. Moves to segment the qualification also risk undermining the perceived coherence and possibly even standing of the solicitors’ qualification.

Over the course of three projects, the LSS evaluated two variants of the TCP. The first, in 1999, involved a relatively conventional assessment across the reserved areas of practice and ethics, which all volunteer trainees passed. But it was recognised that this was not really a test of practice-readiness; it was essentially another assessment of academic knowledge which added little to trainee competence. Consequently, the LSS appointed external consultants³ to advise on the form of a more appropriate set of assessment tasks. Their recommendations offered the LSS four options:

¹ The discussion in this section draws on three sources for its information: L. Campbell, ‘Vocational legal education in Scotland: A model of partnership in action’, Paper to the UKCLE Vocational Teachers Forum (8 January 2005). Available from the UK Centre for Legal Education archive online at <http://ials.sas.ac.uk/library/archives/ukcle/78.158.56.101/archive/law/resources/teaching-and-learning-practices/grantham2/..%5C..%5C..%5Cresources%5Cteaching-and-learning-strategies%5Ccampbell%5Cindex.html>; P. Maharg, ‘Test of professional competence: First pilot examination (2002) available online at <https://digitalcollections.anu.edu.au/handle/1885/14576>, and P. Maharg, ‘Test of professional competence: Second pilot examination (2002) available online at <https://digitalcollections.anu.edu.au/handle/1885/101197>

² This has arguably also been one of the challenges confronting the SRA in proposing its broad-based SQE.

³ Alison Bone of the University of Brighton, and Professor Nick Johnson of the (then) Oxford Institute of Legal Practice.

- model A – a closed book examination testing knowledge of the area in which the trainee has specialised
- model B – a critical incident analysis
- model C – a project
- model D – a combination of a project and a completed training record, including an analysis of one critical incident

Despite the fact that it was potentially the most burdensome, the LSS Education and Training Committee favoured model D. However, this view was not wholly reflected by the LSS Council and the wider profession. Concerns were expressed particularly about the project report, which it was felt would be too open to plagiarism. Consequently the TPC Panel, which had been convened to oversee construction of the new assessment, had to change course and explore a different alternative. Its compromise solution was an open-book assessment, based partly on prepared materials, focussed on an area of practice selected by the trainee (ie, one of a set of prescribed areas of which trainees had substantial experience). As with the original 1999 pilot, ethical knowledge and understanding would be assessed pervasively.

The LSS devised outcomes and assessment procedures, and trained practice-based examiners who, in turn, wrote and validated the assessments. An evaluation process was also designed by one of the TPC Panel members, Dr Paul Maharg, and two evaluation reports were produced at the conclusion of the project.⁴

The results of the pilot were not as anticipated. Trainees failed the (second) pilot in numbers significantly above what was reasonably expected. These outcomes, together with the evaluation report data, demonstrated beyond doubt that the TPC had failed to assess trainees' practice competence, and, moreover, that it provided little useful information about trainee performance to either the LSS, the training firms or the trainees themselves. What had gone wrong?

First, there was some evidence that the implementation process had become too rushed, given the complexities involved. This was particularly true of the first pilot, where the change from project-based to open book assessment had had a significant impact on development time. Assessors had not been sufficiently trained in competence-based assessment; assessments were not of a consistent standard across areas, and some lacked "practice complexity";⁵ trainees and supervisors also lacked information on the process. A number of recommendations to remedy these defects were implemented in time for the second pilot, but even so, those weaknesses largely remained.

Secondly, there was some evidence that the 'examination' form of the assessment led trainees to revert to what they knew best to do under (traditional) examination conditions – reproduce 'knowledge', not engage with 'practice'. As Campbell put it, they "reverted to 'exam mode'", and either ignored or did not properly use the preparatory material, focussing instead on the papers presented with the assessment task.⁶

Thirdly, the pervasive assessment of ethics had proved particularly problematic, and unrealistic. Trainees may have developed some skill in identifying ethical problems, but they were not necessarily adept at advising on or resolving those issues. When substantive issues arose in practice, it tended to be the norm to refer the matter to the supervising solicitor or a partner. Consequently,

⁴ Above n.1

⁵ Maharg, *Report on First Pilot*, p.13

⁶ Above n.1

ethics issues in the papers were either ignored (not necessarily because students didn't know the answer, but often because they assumed the issues had been resolved between the preliminary papers and the assessment task) or not well-handled. To simply refuse to act, or to refer the matter up to the partner were not options on the TPC!

Most fundamentally, however, as Paul Maharg concluded,⁷ the pilots pointed to the persistent difficulty the LSS faced (and would continue to face) in trying to align three fundamental elements of the assessment process: the assessment criteria, the trainees' work experience, and the format of the assessment. As he observed:

*What we have here is a re-enactment of the arguments and debates in competence-based education, as to whether assessment in professional competence education can ever be separated from the workplace where so much of professional method, attitudes and skills are learned. Whether in theory it can be is the subject of conflicting research findings. Whether in the case of the TPC it ought to be so separated is, from the evidence of the experience of the stage two pilot trainees, a much clearer issue.*⁸

Not surprisingly, on the evidence presented the TPC Panel did not feel confident that the proposed open-book assessment could be made fit for the purpose of a 'high stakes' final assessment of competence. Consequently they recommended to the LSS that the examination element of the TPC should not be taken forward, or at least not in that form. That recommendation was accepted, and no further work was undertaken on a final test of competence,⁹ though the Panel's recommendation for a single system of outcomes for legal education and training was subsequently taken-up in the post-2006 review processes discussed in Section 3 of this Report.

2. CENTRALISED ASSESSMENT ON THE BPTC

Centralised assessment was introduced onto the BPTC in 2011-12 following recommendations in the Bar Standards Board's Wood Report of 2008 (discussed in Section 3). The centralised assessments were introduced for the core 'knowledge areas' of the Course: Professional Ethics; Civil Litigation and Evidence, and Criminal Litigation, Evidence and Sentencing. The aim of the change was chiefly to enhance consistency and standardisation across providers. All other Course assessments (skills and electives) continue to be assessed by the different course providers. The current process is described on the Bar Standards Board website as follows:¹⁰

"All BPTC students sit centralised assessments on the same day at the same time.

The Professional Ethics exam paper comprises six short answer questions (SAQs) which are centrally marked by the BSB. The Civil Litigation and Criminal Litigation exam papers each

⁷ Maharg, *Report on Second Pilot*, 18.

⁸ *Id.*, 17

⁹ Interestingly, Campbell indicates that "the consistent underestimate of the resources it would take, both financial and human" to develop an effective TPC may also have been a significant factor in halting the project. See above n.1.

¹⁰ Bar Standards Board, 'BPTC Centralised Assessments' available online at <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/current-requirements/bar-professional-training-course/bptc-centralised-assessments/>

comprise 75 multiple choice questions (single correct answer and single best answer questions) which are marked electronically by the BSB.

Exam	Duration	No of questions
Professional Ethics	2.5 hours	6 SAQs
Civil Litigation	3 hours	75 MCQs
Criminal Litigation	3 hours	75 MCQs

The standard for success is determined at each sitting based on the difficulty of the questions (using a criterion-referenced standard setting technique) and so may differ between sittings.”

Assessments are set on behalf of the BSB by a Central Examination Board (CEB). The CEB is chaired by a senior academic who is otherwise independent of the BSB. It comprises a group of senior examiners, involving both experienced legal practitioners and academics, who are also independent of the course providers. Psychometric and assessment experts also support the work of the CEB in validating and reporting on the results of the assessment process. Annual reports of the assessment process, and statistical analysis of the results are published.

In process terms, the BPTC centralised assessments appear to be well-resourced and to have developed robust methods for assessment and evaluation of results. Examination cohort performance is analysed after each assessment and questions that are statistical outliers will be reviewed, and may be excluded from the tally if, on review, they are considered ambiguous or misleading.

One effect of the process has been to reduce the pass rate for the knowledge areas quite substantially. For 2015, the pass rates were, Professional Ethics 56.7%; Civil Litigation, Evidence and Remedies 58% (the BSB website mis-names this paper), Criminal Litigation, Evidence and Sentencing 62.5%. Moreover (and these facts are likely connected) the assessment process appears, particularly in its early years, to have been dogged by complaints from students and teaching institutions regarding the fairness and validity of some of the assessments, and particularly for Professional Ethics.¹¹ Unfortunately, much of the evidence for this is anecdotal and hard to verify, and so must be treated with caution.

In summary, the positive effects (from a competence perspective) seem to be that the move to centralised assessment has raised the standard, in that students cannot simply rote learn and reproduce notes, because the assessments require demonstration of specific and sometime quite highly nuanced understanding. The assessments also require demonstration of a broad range of knowledge, since the assessment format does not support question-spotting, and can also combine rules and principles from quite separate parts of the syllabus. If the complaints, on the other hand,

¹¹ Including concerns that in 2013, a significant number of question in the pool of mock questions used by providers inadvertently turned up in the centralised assessment – see, eg, <http://jonathansaacs.com/2013/03/20/the-bar-standards-board-sets-paper-that-contained-questions-which-featured-on-mock-taken-by-one-bptc-provider/>

are accurate, then there have also been significant misunderstandings of and differences in interpretation of the syllabi between examiners and course providers, some testing of quite esoteric points, and a largely unexplained high failure rate in Ethics.

A BSB review of the centralised assessments took place in 2015.¹² The report is brief and offers little indication of either its findings or its reasoning.¹³ It nonetheless recommended a range of changes to the assessment process over the two years 2016-2017. The key changes have been to examination and question format for the Criminal and Civil papers. As a consequence, there is no longer a two-part examination comprising both a multiple choice component and a short answer component, with a requirement to pass each component. The exams instead are now entirely in MCQ "single best answer" format. What impact these changes have remains to be seen. Changes to the Professional ethics paper format were also under consideration, but have not been announced.

The BSB experience is thus, we believe, useful. It is fundamentally a well-resourced and robust model in many respects, but it also highlights the risks in separating teaching from assessment; the degree to which decisions about the type of assessment instrument used may have substantial consequences for assessment outcomes, and the problems of subjecting students to a high stakes examination, that is also, in the words of the BSB (albeit in 2012) "a work in progress".¹⁴

¹² Bar Standards Board, 'Review of the Centralised Assessments 2015' at https://www.barstandardsboard.org.uk/media/1713290/centralised_assessments_review_-_for_publication.pdf

¹³ One might speculate whether that was in part to 'litigation-proof' the existing assessment arrangements, but there is no evidence to that effect.

¹⁴ 'Report on the operation of the Bar Standards Board Central Examinations Board (July 2012) cited in J. Burke, 'An Impediment to Accord or a Springboard for Change? The Proposal to Introduce a Common Qualifying Exam in Hong Kong' (2015) 23 *Asia Pacific Law Review* 123 at 127.