

# Legal Education, Practice Skills, and Pathways to Admission: A Comparative Analysis of Singapore, Hong Kong, and Australia

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## I. Introduction

It appears axiomatic that as legal practice becomes more globalized, so too must legal education. One of the byproducts of the globalization of legal practice, involving both an increase in cross-border activity and also changes in the way the legal profession is structured and regulated,<sup>1</sup> is that law schools are increasingly expected to prepare graduates for the challenges of global practice. An important question that arises in this respect is the role law schools should perform in preparing graduates for admission and, in particular, equipping graduates with the practice skills that lawyers need to operate effectively in a cross-border context. A substantial body of literature exists concerning the globalization of legal education and the globalization of legal practice.<sup>2</sup> This paper contributes to the discourse by examining the relationship between the design of pathways to admission—namely, the processes by which graduates qualify for admission to legal practice—and legal education, particularly the incorporation of practice skills into the law school curriculum.

This paper examines three jurisdictions in Asia that share a common-law heritage but adopt substantially different pathways to admission: Singapore, Hong Kong, and Australia. All three jurisdictions share a requirement for graduates to obtain practical training before they gain admission to practice.

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1. Globalization also involves the increasing impact of technology on the legal profession. For a discussion about the impact of IT on the practice of law, see RICHARD SUSSKIND, *TOMORROW'S LAWYERS* (2013).
2. See *infra* Part II.

Singapore is unique among the three jurisdictions in that its pathway to admission involves a bar examination that follows a compulsory preparation course. Hong Kong and Australia, by contrast, currently do not adopt a bar examination and, instead, require completion of postgraduate professional legal training as a prerequisite to admission. However, two important points of difference exist between Hong Kong and Australia. First, enrollment in Hong Kong's postgraduate certificate in laws (PCLL), an intensive one year full-time legal qualification program, is through competitive application. The existence of caps at each of the three providers<sup>3</sup> means that not all graduates are guaranteed of winning a place in the PCLL and, therefore, gaining admission to practice. By comparison, enrollment in the practical legal training (PLT) course in Australia is not capped and all law graduates are therefore able to enroll in the course and gain admission to practice upon successful completion of the course. The second point of difference is that graduates in Australia can undertake supervised workplace training as an alternative to the PLT course and gain admission to practice on that basis without the need to complete a postgraduate professional training course. Interestingly, Hong Kong is currently moving closer to the approach of Singapore with the announcement by the Law Society of Hong Kong in January 2016 that a common entrance examination will be introduced and will come into effect by 2021.<sup>4</sup>

Critical questions in all jurisdictions are the role that law schools should play in preparing graduates for admission and the extent to which practice skills are expected to form part of the curriculum for the academic degree, as distinct from the professional training course that follows graduation and precedes admission. In this respect, the similarities are closer among the three jurisdictions. Unlike the American Bar Association, which requires students to complete at least six credit hours of experiential education,<sup>5</sup> all three jurisdictions to date have avoided a prescriptive approach and have instead given the law schools discretion to determine how practice skills should be incorporated into the curriculum.<sup>6</sup> However, some interesting points of

3. The three providers are Hong Kong University, Chinese University of Hong Kong, and City University of Hong Kong.
4. *Common Entrance Examination*, LAW SOCIETY OF HONG KONG (Jan. 6, 2016), [http://www.hklawsoc.org.hk/pub\\_e/news/press/20160106.asp](http://www.hklawsoc.org.hk/pub_e/news/press/20160106.asp) [hereinafter *Common Entrance Exam*].
5. AM. BAR ASS'N, *Standard 303: Curriculum*, in STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015-2016 (2015) [hereinafter ABA STANDARDS], [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2015\\_2016\\_chapter\\_3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_chapter_3.authcheckdam.pdf)
6. See, e.g., PAUL REDMOND & CHRISTOPHER ROPER, COMPILATION OF RECOMMENDATIONS, LEGAL EDUCATION AND TRAINING IN HONG KONG: PRELIMINARY REVIEW 350-1 (Aug. 2001), [www.hklawsoc.org.hk/pub\\_e/news/societyupdates/20010813a.asp](http://www.hklawsoc.org.hk/pub_e/news/societyupdates/20010813a.asp) ("That, subject to the choice of structure of the academic stage, professional legal (or lawyering) skills have a legitimate place in the academic stage of legal education in Hong Kong, but not as an essential requirement for each school. Accordingly it is appropriate for a law school to include such skills in the LLB curriculum either as an elective subject or subjects or as part of the compulsory core.").

difference exist among the three jurisdictions in terms of the extent to which the design of pathways to admission has been driven by perceived deficiencies in the teaching of practice skills within the academic degree and, therefore, the need to supplement these deficiencies as a prerequisite to practice. This paper examines the development of pathways to admission and identifies a number of interesting countervailing trends and contradictions.

A central question raised by the comparative analysis is whether professional admission courses should serve as a gatekeeper in terms of assuring quality and competence or whether they should serve simply as preparatory courses for admission to the legal profession. The comparative analysis reveals a number of countervailing trends and contradictions concerning fundamental issues such as the function of a law degree and the impact of globalisation on legal education and legal practice. This paper argues that it is important for legal education to strengthen practice skills while maintaining a rigorous focus on legal doctrine and general skills such as analysis, problem-solving and research.

This paper is structured as follows: Part II explores the relationship between legal education and legal practice by examining the emergence of professional training courses and the increasing expectations for law schools to incorporate practice skills into the curriculum. Parts III, IV, and V consider the pathways to admission in Singapore, Hong Kong, and Australia, respectively, and track the debates in each of those jurisdictions concerning the relative importance of practice skills in their design. Part VI sets out the findings of the comparative analysis and offers some observations by way of conclusion.

## **II. The Relationship Between Legal Education and Legal Practice**

Over the past two decades or so, a significant trend in many jurisdictions, including the United Kingdom and the three jurisdictions that are the focus of this analysis, has been the emergence of professional training courses to prepare law graduates for admission. In some cases, such as Hong Kong, these courses are provided by the law schools. In other cases they are provided by independent vocational education providers, such as the Singapore Institute of Legal Education. In the case of the United Kingdom and Australia, the professional training courses often involve a partnership between the course providers and the law firms themselves and the design of firm-specific courses that interact with the internal training programs within the law firms.<sup>7</sup>

At least three factors might explain the trend toward professional training courses following graduation and prior to admission. First, a need exists to achieve consistency in the technical knowledge that law graduates require and also to ensure that law graduates achieve the minimum competency and

7. For a discussion of this trend, see James R. Faulconbridge & Daniel Muzio, *Legal Education, Globalization, and Cultures of Professional Practice*, 22 *GEO. J. LEGAL ETHICS* 1335 (2009). As noted by Faulconbridge and Muzio, the advent of vocational education and professional development courses means that “the university is increasingly only one of the many sites in which professional development and identity formation occurs.” *Id.* at 1337.

quality standards. This need has grown as the number of law schools has increased—together with the number of graduates—and as the purpose of the law degree has expanded over the past few decades to operate both as a liberal arts degree and as a professional degree. In this regard, scholars have debated the purpose of a law degree and argued about the impact of neoliberalism on critical legal scholarship and on the socio-liberal aspects of legal education.<sup>8</sup>

The second factor relates to changes in the nature of legal practice itself, particularly in view of the globalization of legal practice, increased competition<sup>9</sup> and the consequential pressures on costs.<sup>10</sup> The related factors of globalization and increased competition appear to have been key drivers of legal education reform in the Australasian region, with many jurisdictions responding to competitive pressures to produce world-class lawyers who can compete with their overseas counterparts.<sup>11</sup> As an example of the pressures on costs, clients are now often reluctant to pay for junior lawyer time on the basis that they should not be expected to pay for junior lawyers “to be trained”; in some cases they are refusing to pay for junior lawyer time at all. This has resulted in a decrease in the opportunities for on-the-job training and an expectation on the part of law firms that graduates will learn faster and “hit the ground running.” In addition, the demands that clients place on lawyers in general and, in particular, on their professional skills, have increased as the role of lawyers

8. See *id.* at 1338 (noting the debate about the purpose of a law degree and “whether the university law degree should provide practice-relevant training or a more broad and liberal education that seeks to develop academic abilities (critical thinking, normative values and consciousness of positionality).”); Harry Arthurs, *The World Turned Upside Down: Are Changes in Political Economy and Legal Practice Transforming Legal Education and Scholarship, or Vice Versa?* 8 INT’L J. LEGAL PROF. 11, 15-17 (2001); Margaret Thornton, *The Demise of Diversity in Legal Education: Globalization and the New Knowledge Economy*, 8 INT’L J. LEGAL PROF. 37 (2001); W. Wesley Pue, *Globalization and Legal Education: Views from the Outside-In*, 8 INT’L J. LEGAL PROF. 87 (2001).
9. The increased competition has been caused partly by the dismantling of the monopoly that lawyers traditionally enjoyed in relation to legal practice and the liberalization of the legal services market that has come about as a result of the move away from self-regulation. All of this reflects a fundamental debate over the role of lawyers in society and how they should be regulated. For a discussion about this in an Asian context, see Andrew Godwin, *Barriers to Practice by Foreign Lawyers in Asia—Exploring the Role of Lawyers in Society*, 22 INT’L J. LEGAL PROF. 299 (2015) [hereinafter Godwin, *Barriers*].
10. For a further discussion of some of these changes, see Arthurs, *supra* note 8, at 17. Arthurs identifies the following changes in this regard: “the segmentation of legal markets and the stratification of the profession; the dilution of the profession’s monopoly and enhanced competition for legal work; the overall growth of the profession and the perceived—if not actual—overcrowding of the market for legal services; the rapid transformation of collegial relations and employment practices in elite legal firms; and of course, the emergence of transnational legal practices serving global enterprises and the incursion of international legal regimes into formerly self-contained domestic jurisdictions” (citations omitted).
11. For example, the 2001 Roper-Redmond Report in Hong Kong expressly agreed with the need to produce lawyers who could “function in the world of international commerce, with the skills and knowledge that [this] requires” and also lawyers who could “function well in the ‘China market’ for legal services.” See REDMOND & ROPER, *supra* note 6, at 68 (citing City University of Hong Kong School of Law submission to the Consultants).

has expanded and reached the point where their commercial experience and business advice are often rated more highly than their technical advice. In a transactional context, the value of lawyers is now perceived to be attributable as much to their ability to act as “business advisors” as to their ability to act as legal advisors.<sup>12</sup>

The third reason, which is closely related to the first two reasons, concerns the need to strengthen practice skills—as distinct from technical knowledge that graduates are expected to have obtained at law school—and to simulate the skills that graduates will need to apply in practice.

Despite the emergence of professional training courses—whether delivered by the law schools themselves or by independent vocational education providers—the literature and debate concerning the role of the law degree suggest that law schools are increasingly being expected to incorporate practice skills into the law degree curriculum. This is reflected in the increase of clinical and transactional law programs within the curriculum and also the use of experiential techniques to teach law.<sup>13</sup> It is relevant to consider why the expectations of law schools have increased in this regard. Some would argue that this is attributable to the influence the legal profession exerts over legal education and the “gravitational pull” of the mega-law firms and their interests.<sup>14</sup> Although one might debate whether such influence is a positive or a negative force in this regard,<sup>15</sup> the argument that this is a relevant factor has some weight. After all, the law degree in most jurisdictions is a prerequisite to admission to practice, and it is therefore logical that the profession should have input into the academic requirements for that purpose. A critical question is what input the legal profession should have in the teaching of practice skills

12. The question of how business lawyers add value has spawned a vigorous debate among scholars, largely triggered by Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 *YALE L.J.* 239 (1984). For a recent contribution to the debate, see Praveen Kosuri, *Beyond Gilson: The Art of Business Lawyering*, 19 *LEWIS & CLARK L. REV.* 463 (2015).
13. For a discussion about the trends toward transactional law and experiential learning, see Andrew Godwin, *Teaching Transactional Law - A Case Study from Australia with Reference to the US Experience*, 16 *TRANSACTIONS TENN. J. BUS. L.* 343 (2015) [hereinafter Godwin, *Transactional*]; Andrew Godwin, *Teaching Corporations Law from a Transactional Perspective and Through the Use of Experiential Techniques*, 25 *LEGAL EDUC. REV.* 221 (2015). The trends have been particularly strong in the United States, where the sole pathway to admission is the bar examination and students are not required to complete a professional training course.
14. See Faulconbridge & Muzio, *supra* note 7, at 1349 (arguing that “legal education is increasingly being captured by large organizations which are rearticulating its structure and content around their own strategic priorities. This implies, in particular, the gradual inflection of legal education with commercial and managerial objectives.”). Thomasset and Laperrière have described this as the “infederation” of law schools to the legal profession. Claude Thomasset & René Laperrière, *Faculties Under Influence: The Infederation of Law Schools to the Legal Professions*, in *The Law School - Global Issues, Local Questions* (Fiona Cownie ed., 1999). See also Thornton, *supra* note 8, at 42-45; Arthurs, *supra* note 8, at 18.
15. For arguments about the negative aspects of neoliberalism or what has been described as “academic capitalism,” see Arthurs, *supra* note 8, at 15-17; Thornton, *supra* note 8, at 42-45; Pue, *supra* note 8, at 93-95.

within the law school curriculum as distinct from the teaching of doctrine or substantive law.

### III. Singapore

The evidence suggests the introduction of the bar examination in Singapore was partly driven by the inadequacies of the previous Practical Course in Law (PCL) in providing graduates with the necessary practice skills. The PCL was introduced in 1967 and was administered by the Board of Legal Education.<sup>16</sup> It was significantly revised in 1982, and then replaced following the 2007 Rajah Report as outlined below.

Writing in 1985, Lim and Ong argued that the PCL was “too academic to confer sufficient practical knowledge to the student.”<sup>17</sup> According to Lim and Ong:

The Practice Law Course is not without merits but is by itself too insular, simulated and unstimulating. Further, what it teaches is not reinforced in pupillage where not many are fortunate enough to learn under a committed master. Moreover, it is submitted that the whole system of legal training in Singapore has unwittingly bred self-centred habits of thought. Legal education should cultivate healthy attitudes towards community service. The profession is a common calling—not a trade. This fact has apparently not been acknowledged by present modes of training in Singapore.<sup>18</sup>

Two aspects of the above comments are relevant for the purposes of the analysis in this paper. First, the comment that the course was “too academic to confer sufficient practical knowledge to the student” suggests that the course was perceived to be too academic in its approach to imparting practice skills. Arguing that the course was “simply an extension of the four years spent at the Law Faculty,” Lim and Ong argued that there was too little time in which to learn anything substantial.<sup>19</sup> In addition, the simulated exercises offered limited benefits because of the lack of realism and the artificial context in which the simulations took place.<sup>20</sup> In particular, insufficient attention was

16. See Sylvia Lim & Ong Keng Sen, *A Time to Confront the Malaise: A Review of Post-Graduate Legal Training in Singapore*, 6 SING. L. REV. 87 (1985).

17. *Id.* at 102.

18. *Id.* at 87.

19. *Id.* at 91.

20. *Id.* at 91-92. Other writers have noted the extent to which simulations may “incorporate hidden assumptions that may not entirely reflect reality” and the associated challenge of authenticity; namely, the risk that the effectiveness of the exercise is undermined by the realisation on the part of students that the exercise is not authentic. See John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. & MARY L. REV. 303, 417 (2007). The challenges of authenticity are also explored by Karen Barton, Patricia McKellar and Paul Maharg, where the writers argue that it is possible to overcome this challenge “by defining authenticity as distributed intelligence within the world, and by using that intelligence in simulation and transactional learning.” Karen Barton et al.,

paid to “humanistic” or soft skills, such as communication skills, and such skills “appeared to be relegated to a secondary position after advocacy... .”<sup>21</sup> Accordingly, Lim and Ong recommended replacing the PLC with an “introductory course” to serve as a “preview and cognitive framework to latter experiences with real clients” followed by a clinical course.<sup>22</sup>

The second aspect of interest, which is still evident in the current debate, is the call for legal education to “cultivate healthy attitudes towards community service” and the assertion that the profession “is a common calling—not a trade.”<sup>23</sup> This public-interest element resonates with recent calls in the Report of the 4<sup>th</sup> Committee on the Supply of Lawyers for the current offering of clinical subjects to be supported and expanded.<sup>24</sup> The reference to the community service lawyers are expected to fulfill reflects an ongoing debate in many jurisdictions in Asia concerning the role of lawyers in society and, consequently, how they should be educated and regulated.<sup>25</sup>

The 2007 Rajah Report was based on a comprehensive review of legal education and the legal profession.<sup>26</sup> The report considered the utility of the admission process at the time. In particular, the Rajah Report noted that the duration of the Practical Law Course, which was six months in duration, was possibly insufficient for practice skills to be meaningfully imparted to the law graduates.<sup>27</sup> In addition, the Rajah Report found that—

the Practical Law Course does not function as a gatekeeper to the entry of new graduates to the profession because traditionally, almost all candidates who have completed a local LLB degree and/or the Diploma in Singapore Law (“DipSing”) proceed to pass the Practical Law Course without difficulty.

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*Authentic Fictions: Simulation, Professionalism and Legal Learning*, 14 CLINICAL L. REV. 143, 191 (2007).

21. Lim & Ong, *supra* note 16, at 93.

22. Lim & Ong, *supra* note 16, at 93.

23. Lim & Ong, *supra* note 16, at 87.

24. See SINGAPORE MINISTRY OF LAW, REPORT OF THE 4<sup>TH</sup> COMMITTEE ON THE SUPPLY OF LAWYERS para. 4.23 (May 2013).

25. *Id.* at para. 2 (stating that “[t]here is at present a shortage of lawyers who practise community law. If no measures are taken to address this, the shortage will be exacerbated...”).

For a discussion about restrictions on the practice of foreign lawyers in Asia and what this reveals about their role in society, see Godwin, *Barriers*, *supra* note 9. A central contention in this article is that barriers to practice by foreign lawyers are motivated not just by protectionism but also by differences of views about the fundamental role of lawyers and their obligations to society.

26. FINAL REPORT, REPORT OF THE COMMITTEE TO DEVELOP THE SINGAPORE LEGAL SECTOR (Sept. 2007), <https://www.mlaw.gov.sg/content/dam/minlaw/corp/assets/documents/linkclieid7.pdf> [hereinafter RAJAH REPORT].

27. *Id.* at para. 2.54.

Instead, the gatekeeping function is performed at the stage of the university admissions.<sup>28</sup>

The Rajah Report further noted the following:

[T]here are advantages to adding a second gatekeeper for entry into the profession at the end of the vocational training phase for the following reasons:

(a) The training for a law degree may not have the same emphases and objectives as the training for entry into legal practice. The former focuses on academic and analytical legal skills, while the latter primarily prepares law graduates for the demands and vicissitudes of legal practice by testing “nuts and bolts” topics such as procedure. Both are equally important.

(b) The LLB degree is a useful degree generally, even for those who do not wish to enter into legal practice, and should be made available to more individuals. A second gatekeeper is therefore essential to ensure that the numbers entering the profession are responsive to market demands.

(c) A more comprehensive and rigorous training course will ensure quality and consistency in the standards of new lawyers who wish to practise, especially as we continue to recognise a wider pool of applicants and candidates for law schools . . . and if the LLB programme is reduced in duration and its coverage of practical law subjects . . .<sup>29</sup>

The advantages of adding a second gatekeeper were also motivated by the perceived need to “enable Singapore to welcome graduates from all over the world and from all universities, while ensuring the quality of students admitted to the Bar.”<sup>30</sup> The issues of what sort of gatekeeping is appropriate, when gatekeeping should occur, and who should act as the gatekeeper are very relevant in the Hong Kong context, as discussed in Part IV below.

Reflecting current realities concerning the limitations of on-the-job training as outlined in Part II above, the Rajah Report identified the limited ability of pupillage in developing practical skills.<sup>31</sup> Accordingly, the Rajah Committee

28. *Id.* at para. 2.56.

29. *Id.* at para. 2.57.

30. *Id.* at para. 2.75. “The Committee envisages that qualification by way of Singapore’s Vocational Training Course may eventually have the same cachet for lawyers wishing to practise in the region as the New York Bar exam is to lawyers worldwide. To promote this, Singapore should open the Vocational Training Course to graduates from all over the world and, to this extent, a foreign course for foreign law graduates should be implemented in the future.” *Id.*

31. *Id.* at para. 2.61. “Pupillage, at some firms, has become a misnomer particularly when the pupil master has little direct contact with the pupil. In other instances, pupils are viewed as a source of cheap labour in some firms, where they are sometimes made to carry out menial or time-consuming tasks instead of receiving meaningful on-the-job training.” *Id.* Similar to the system of articles previously adopted in jurisdictions in Australia, pupillage in



recommended introducing a bar examination and replacing the PLC with a “Vocational Training Course,” which would “retain its traditional function of ensuring competency in core subject areas but [would] also be more responsive to the needs of individual students by allowing them to tailor their own courses through the election of optional subjects in their area of specialisation such as advanced civil and criminal procedure, litigation skills, alternative dispute resolution skills and mechanisms, admiralty law, corporate practice and corporate restructuring (including, for instance, insolvency law and mergers and acquisitions).”<sup>32</sup> The Rajah Report also recommended the introduction of a training contract, which would “be entered into with a firm, rather than with a partner” and would “oblige the firm to engage its trainees in a structured learning programme that would include, for instance, client-interviewing skills and advocacy skills (if the trainee is in the litigation department).”<sup>33</sup>

The Singaporean government accepted the bulk of the recommendations of the Rajah Report.<sup>34</sup> As a result, the bar examination was introduced to replace both the Diploma of Singapore Law (Dip Sing), which foreign lawyers had previously been required to complete in order to qualify in Singapore, and the PCL.<sup>35</sup> Part A of the bar exam replaced the Dip Sing and applies only to graduates who attended prescribed non-Singaporean universities. The Legal Profession (Qualified Persons) Rules list universities from which a law degree will be recognized in Singapore.<sup>36</sup> The holder of a recognized degree

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Singapore previously involved a pupil being “articled” to an individual lawyer, who would be responsible for instructing the pupil in the principles and practice of law.

32. RAJAH REPORT, *supra* note 26, at para. 2.63.
33. RAJAH REPORT, *supra* note 26, at para. 2.66. Like the positions in Australia and the U.K., the training contract places the onus of training on the firm rather than an individual solicitor or master. The Rajah Report further noted “that the training offered to new associates and trainees is regarded a major attraction in jurisdictions such as the UK and the US, and that surveys and rankings of law firms among associates regularly include the standard of training as a factor.” *Id.* at para. 2.67.
34. *Government Accepts Key Recommendations of Justice V K Rajah’s Committee on the Comprehensive Review of Legal Services Sector*, MINISTRY OF LAW SINGAPORE (Dec. 6, 2007), <https://www.mlw.gov.sg/news/press-releases/government-accepts-key-recommendations-of-justice-v-k-rajah-s-committee-on-the-comprehensive-review.html>. In debate following the publication of the Rajah Report, parliamentarians noted the duplicative nature of the Dip Sing Course, the disincentives for graduates from foreign universities, the extent to which the requirements had led to a shortage of lawyers in Singapore and the need to set appropriate standards for admission. Singapore Parliamentary Debates, Official Reports, vol. 84, cols. 1054-99, 1060-4 (Feb. 27, 2002), [https://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00002924-WA&currentPubID=00004754-WA&topicKey=00004754-WA.00002924-WA\\_1%2B%2B](https://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00002924-WA&currentPubID=00004754-WA&topicKey=00004754-WA.00002924-WA_1%2B%2B) (statements of Mr. Christopher de Souza and Mr. Hri Kumar Nair).
35. Legal Profession Act (Chap. 161, 2009 Rev. Ed.) (Sing.). *See also* Legal Profession (Qualified Persons) Rules, Rule 15 (Rev. Ed. 2002) (Sing.); Legal Profession (Admission) Rules 2011 (Sing.).
36. These include universities in the United Kingdom, Australia and New Zealand, First to Fourth Schedules, Legal Profession (Qualified Persons) Rules, Rule 15 (Rev. Ed. 2002) (Sing.), and the United States, *Id.* at Fifth Schedule. *See also Approved Universities*, Ministry

at the relevant level (typically the top thirty percent of the graduating cohort) is eligible to sit Part A of the bar exam.<sup>37</sup> Preparatory courses for Part A are conducted, but these are not compulsory. Holders of a prescribed Singaporean Law degree do not need to complete Part A of the bar exam.<sup>38</sup>

The preparatory course to Part B, which is compulsory for all graduates, replaced the PCL. The preparatory course for Part B of the bar examination runs full time between July and December.<sup>39</sup> One of the aims of Part B of the bar examination is to “train candidates in the skills of the professional lawyer and provide opportunities to practise these skills under supervision, with particular emphasis on the core competencies expected of a newly-admitted lawyer.”<sup>40</sup> Students are forbidden to engage in outside work while completing the course.<sup>41</sup> The compulsory subjects are as follows: civil litigation practice; criminal litigation practice; insolvency law and practice; real estate practice; family law practice; ethics & professional responsibility; and professional skills.<sup>42</sup> In addition, students must complete two elective subjects, one from Category A and one from Category B. The electives in Category A are advanced corporate practice; intellectual property law practice; and the law and practice of arbitration. The electives in Category B are admiralty practice; wills, probate, and administration; mediation skills; and cross-border transactions.<sup>43</sup> After completing Part B of the bar examination, graduates must “satisfactorily [serve] the practice training period...”<sup>44</sup> This currently runs for six months.

The Report of the 4<sup>th</sup> Committee on the Supply of Lawyers, which was released in May 2013, drew comparison with other jurisdictions, including Hong Kong and Australia, on the prevalence of lawyers in society and

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of Law Singapore, <https://www.mlaw.gov.sg/content/minlaw/en/practising-as-a-lawyer/approved-universities.html> (last updated Sep. 9, 2015).

37. Legal Profession (Qualified Persons) Rules, Rule 15 (Rev. Ed. 2002) (Sing.), *see also Admission Requirements*, MINISTRY OF LAW SINGAPORE, <https://www.mlaw.gov.sg/content/minlaw/en/practising-as-a-lawyer/AdmissionRequirements.html> (last updated Sep. 9, 2015); *Part A*, SINGAPORE INSTITUTE OF LEGAL EDUCATION, <http://www.sile.edu.sg/part-a> (last updated July 14, 2016).
38. Legal Profession (Qualified Persons) Rules, Rule 15 (Rev. Ed. 2002) (Sing.), *see also Admission Requirements*, MINISTRY OF LAW SINGAPORE, <https://www.mlaw.gov.sg/content/minlaw/en/practising-as-a-lawyer/AdmissionRequirements.html> (last updated Sep. 9, 2015); *Part B*, SINGAPORE INSTITUTE OF LEGAL EDUCATION, <http://www.sile.edu.sg/part-b> (last updated July 14, 2016).
39. *Part A*, SINGAPORE INSTITUTE OF LEGAL EDUCATION, <http://www.sile.edu.sg/part-a> (last updated July 14, 2016).
40. *Part B*, SINGAPORE INSTITUTE OF LEGAL EDUCATION, <http://www.sile.edu.sg/part-b> (last updated July 14, 2016).
41. *Id.*
42. *Id.*
43. *Id.*
44. *Legal Profession Act (Chapter 161) s 13(1)(c)*. [http://www.sile.edu.sg/pdf/Legal\\_Profession\\_Act\\_\(Cap\\_161,\\_2009\\_Rev\\_Ed\).pdf](http://www.sile.edu.sg/pdf/Legal_Profession_Act_(Cap_161,_2009_Rev_Ed).pdf).

considered measures that Singaporean law schools could take to reduce the level of attrition in the legal industry.<sup>45</sup> Chief among its recommendations was for law schools to provide “early preparation for the realities of practice,” noting that it is “imperative that law students [be] given a realistic view of what practice is like as part of their law school experience” and that this can be achieved “through sufficient exposure to law firms via internships and programmes that may be offered in law school.”<sup>46</sup> To this end, the Report recommended that “the existing clinical legal programmes at the 2 local law schools should be supported and expanded.”<sup>47</sup> The Report noted various subjects that had been introduced at the universities, including The Law Clinic at National University of Singapore and the Asian Rule of Law Programme at Singapore Management University,<sup>48</sup> and suggested that a more structured internship program be developed by the two law schools<sup>49</sup> and that the law schools work together with the Law Society to set up a centralized and more structured system for internships. The report also recommended establishing a third university in Singapore to focus on “training prospective lawyers keen on practising community law”<sup>50</sup> The findings of the Report have been received favorably by the Singaporean government.<sup>51</sup>

It is interesting to note that the recommendations for law schools to expand their clinical legal programs and to provide “early preparation for the realities of practice” were motivated partly by the need to reduce the level of attrition in the legal industry in Singapore. This suggests that some graduates are ill-prepared for practice, despite the introduction of Parts A and B of the bar examination and the relevant preparatory courses. It also suggests that law schools should prepare graduates for the realities of practice and should strengthen their role as a first gatekeeper in this regard. To this end, there is a perceived need for law schools to expand their clinical and internship programs.

45. SINGAPORE MINISTRY OF LAW, REPORT OF THE 4<sup>TH</sup> COMMITTEE ON THE SUPPLY OF LAWYERS (May 2013).

46. *Id.* at para. 4.19.

47. *Id.* at para. 4.23.

48. *Id.* at paras. 4.20-4.21.

The Report also acknowledged the challenges that arise in teaching clinical law programs, including attracting teachers with the relevant experience, ensuring consistent grading, and ensuring the existence of sufficient rigor in clinical legal programs. *Id.* at para. 4.22. For a discussion about these challenges, see Godwin, *Transactional*, supra note 13.

49. SINGAPORE MINISTRY OF LAW, REPORT OF THE 4<sup>TH</sup> COMMITTEE ON THE SUPPLY OF LAWYERS (May 2013) para. 4.29.

50. *Id.* at para. 2.21.

51. *Government Welcomes Key Recommendations of the 4th Committee on the Supply of Lawyers*, MINISTRY OF LAW SINGAPORE (May 28, 2013). <https://www.mlaw.gov.sg/news/press-releases/government-welcomes-key-recommendations-of-the-4th-committee-on-the-supply-of-lawyers.html>.

## IV. Hong Kong

### (i) Previous reform in Hong Kong

The need to strengthen practice skills played a significant role in reshaping the PCLL following the Roper-Redmond Report in 2001. The Roper-Redmond Report was the product of a review of legal education conducted by Professor Paul Redmond and Mr. Christopher Roper under the auspices of the Steering Committee on Legal Education and Training between 1999 and 2002.<sup>52</sup>

As noted by Hong Kong's three law schools, the effect of the reforms implemented following the Roper-Redmond report was as follows:

The academic components of the PCLL programmes were taken out and rolled back to the LLB programme so as to make room for more practice training in the PCLL course, which has since 2005 become a skills-based programme to prepare law graduates to embark on either traineeship (to become solicitors) or pupillage (to become barristers). The Law Society and the Bar Association each set out their own benchmarks, which have to be met by the PCLL providers.<sup>53</sup>

The implemented reforms did not adopt the recommendations of the Roper-Redmond Report in full. The Roper-Redmond Report had recommended replacing the PCLL with a new sixteen-week legal practice course (LPC), which would be taught outside the universities by a "free-standing institution."<sup>54</sup> The reasons given for replacing the PCLL with a legal practice course delivered by an independent body were that "the development of the PCLL [had] been constrained by its location as a distinct programme of practical legal training offered within an academic institution;"<sup>55</sup> the PCLL was not able to provide the "essential element of practical training which enables academic training to be used in practical ways;" and pupillage or training contracts were not able to provide "training in lawyering skills to the standard required if the Hong Kong legal profession [was] to be of world

52. For an outline of the reforms, see the JOINT SUBMISSION FROM THE FACULTY OF LAW, THE UNIVERSITY OF HONG KONG, THE FACULTY OF LAW, CHINESE UNIVERSITY OF HONG KONG, AND THE SCHOOL OF LAW, CITY UNIVERSITY OF HONG KONG TO THE PANEL ON ADMINISTRATION OF JUSTICE AND LEGAL SERVICES, THE LEGISLATIVE COUNCIL ("LEGCO") (2013), <http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1216cb4-234-1-e.pdf> [hereinafter JOINT SUBMISSION]. For the report, see REDMOND & ROPER, *supra* note 6.

53. JOINT SUBMISSION, *supra* note 52, at para. 6.

54. REDMOND & ROPER, *supra* note 6, at 200-05. According to the recommendations, the institution would "be governed by a board on which the two branches of the profession would have substantial representation but which would also include people drawn from the judiciary, government, the universities and the wider community." *Id.* at 357. This proposal was similar to the current arrangement in Singapore with the Singapore Institute of Legal Education. See *supra* Part III.

55. REDMOND & ROPER, *supra* note 6, at 112.

standard.”<sup>56</sup> The report recommended that the LPC “take the form of solely practical training, that is training in transactions and skills, within a strong ethical context”; that “innovative teaching methods be employed, including learning-by-doing and the inclusion of some distance learning approaches”; that “the LPC curriculum be based on a conceptual framework of how legal work is done rather than necessarily being structured around subject areas of the law”; and that “the LPC, to the extent possible, seek to complement and reinforce the training received in pupillage or a trainee solicitor contract.”<sup>57</sup>

Instead, however, major reforms were made to the PCLL, the purpose of which was to “convert the PCLL into a course with generally similar aims and objectives to those envisaged by the consultants for their proposed LPC.”<sup>58</sup> Arguably, the reforms have gone further than those envisaged under the LPC model through the revision of the PCLL to incorporate a highly practice-oriented focus,<sup>59</sup> the commitment of government and university resources to enable the curriculum to be revised on an ongoing basis, and the recruitment of experienced practitioners from inside and outside Hong Kong to teach into the program.<sup>60</sup> As before, the PCLL has continued to be delivered by the three law schools instead of by an independent body.<sup>61</sup>

A detailed review of legal education in Hong Kong is currently being undertaken by the Standing Committee on Legal Education and Training (SCLET). The SCLET is “empowered, amongst other things, to keep under review legal education and training in Hong Kong, to make recommendations thereon, and to collect and disseminate information about legal education and training in Hong Kong.”<sup>62</sup>

56. REDMOND & ROPER, *supra* note 6, at 185.

57. REDMOND & ROPER, *supra* note 6, at 205-06. This proposal was similar to the approach currently adopted in the U.K. under its legal practice course and in Australia under its practical legal training course. See *infra* Part V.

58. *Review of Legal Education and Training in Hong Kong—Progress Report LC Paper No. CB(2) 987/01-02(03)*, Hong Kong Legislative Council 3 (Jan. 2002), <http://www.legco.gov.hk/yr01-02/english/panels/ajls/papers/ajl0128cb2-987-3e.pdf>.

59. This is reflected in practical courses such as the China practice course at Hong Kong University, which was designed by Richard Wu.

60. This, we suggest, is facilitated by the provision of professional training courses by the universities, which appeals to experienced alumni and practitioners who want to make a career change to academia but otherwise have no interest in delivering training in private professional legal education providers. Further, the law schools are able to tap public and university funding, in the form of teaching development grants and teaching exchange fellowships, which encourage collaboration with academics from overseas and underpin Hong Kong’s status as an international market for legal services.

61. The three providers are Hong Kong University, Chinese University of Hong Kong, and City University of Hong Kong.

62. *Chairman’s Message*, STANDING COMMITTEE ON LEGAL EDUCATION AND TRAINING (2016), <http://www.sclet.gov.hk/eng/index.htm> (last updated April 21, 2016). As explained on the website, “In November 1999, an ad hoc Steering Committee on Legal Education and Training was established to conduct a comprehensive review of legal education and training in Hong

(ii) *The introduction of a common entrance examination in Hong Kong*

Independently of the SCLET review, the Law Society of Hong Kong commenced its “Consultation on the feasibility of implementing a common entrance examination (CEE) in Hong Kong” in 2013.<sup>63</sup> Although the CEE would apply to the admission of solicitors and not barristers, the Hong Kong Bar Association expressed concerns in relation to the introduction of the CEE in its submission to the Comprehensive Review of the Legal Education and Training and Hong Kong,<sup>64</sup> as it did not perceive any issue with the quality of solicitors joining the bar. In response to the concerns by some members of the Legislative Council of Hong Kong that the PCLL operated as a “bottleneck” to admission,<sup>65</sup> the Bar Association argued:

Given that the market could not absorb all those who want to be a practising lawyer, it is inevitable that somewhere in the educating process there would be a bottle neck eliminating those who are less competitive. We see no reason why the bottle neck should not be at the stage of PCLL admission. After all the PCLL training is really directed at preparing practising lawyers and it would even be a bigger waste of resources if after a full year of PCLL training, the holders of the PCLL then find themselves unable to find a trainee contract or are forced out of the Bar because of insufficiency of work.<sup>66</sup>

On January 6, 2016, the Law Society of Hong Kong announced that the “[t]he Council of the Law Society has decided that, starting from 2021, a person may only enter into a trainee solicitor contract if that person has passed

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Kong. Following that review, the Steering Committee made numerous recommendations, one of which was the establishment of a statutory body with sufficient status and powers to oversee the implementation of reforms and to monitor the future direction of legal education and training.” *Id.*

63. *Consultation on the Feasibility of Implementing a Common Entrance Examination in Hong Kong*, LAW SOCIETY OF HONG KONG (2014), [http://www.hklawsoc.org.hk/survey/cee/HKLS\\_Consultation\\_document.pdf](http://www.hklawsoc.org.hk/survey/cee/HKLS_Consultation_document.pdf). For background to this consultation, see Jack Burke, *An Impediment to Accord or a Springboard for Change? The Proposal to Introduce a Common Qualifying Exam in Hong Kong*, 23 ASIA PAC. L. REV. 123 (2015).
64. SUBMISSION OF THE HONG KONG BAR ASSOCIATION ON THE CONSULTATION PAPER OF THE COMPREHENSIVE REVIEW OF THE LEGAL EDUCATION AND TRAINING IN HONG KONG BY THE STANDING COMMITTEE ON LEGAL EDUCATION AND TRAINING, para. 19 (Dec. 2, 2014) (“On the whole...the Bar is satisfied with the quality and standard of the PCLL graduates produced by the universities.”) [hereinafter SUBMISSION BAR ASSOCIATION].
65. The Law Society has indicated that the introduction of the CEE has not been driven by any “bottleneck” concern; however, some members of LegCo had expressed concern that the PCLL “had become a bottleneck for admission to the legal profession.” See PANEL ON ADMINISTRATION OF JUSTICE AND LEGAL SERVICES BACKGROUND BRIEF PREPARED BY THE LEGISLATIVE COUNCIL SECRETARIAT FOR THE MEETING ON 27 APRIL 2015, THE LAW SOCIETY OF HONG KONG’S PROPOSAL TO INTRODUCE A COMMON ENTRANCE EXAMINATION IN HONG KONG, LC PAPER NO. CB(4)825/14-15(07), para. 36 (Apr. 25, 2015), <http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150427cb4-825-7-e.pdf> [hereinafter LAW SOCIETY PROPOSAL].
66. SUBMISSION BAR ASSOCIATION, *supra* note 64, at para. 43.

a Common Entrance Examination (“CEE”).<sup>67</sup> The CEE would be set and marked by the Law Society.<sup>68</sup> The Law Society would require completion of the PCLL course, but would not require any examination to be set by the providers of the PCLL.<sup>69</sup>

The announcement stated that the purposes of the CEE were as follows: (1) to uphold the quality of the entrants to the solicitors’ profession; (2) to provide access to those who have the ability to qualify as a solicitor;<sup>70</sup> and (3) to maintain the standards of the profession and to protect public interest.<sup>71</sup> The debate surrounding the announcement suggests that the main drivers include the following: (1) the need to achieve consistency of assessment among the PCLL providers;<sup>72</sup> and (2) the need to have a second gatekeeper for entry to the profession as a result of the proliferation of law schools and the perceived decrease in standards and quality. The need to focus more on the assessment of practice skills than on academic knowledge was also identified as a potential issue in the consultation paper.<sup>73</sup>

As noted above, the decision to introduce a CEE has been contested by the Bar Association, which expressed its “serious concerns” and regret that the announcement had been made without any consultation or prior notice.<sup>74</sup> The

67. *Common Entrance Exam*, *supra* note 4.

68. *Id.*

69. *Id.*

70. There is little background to the access concern. However, the Law Society had foreshadowed that the CEE could “act as an alternative for those unable to access the PCCL” in its consultation paper. *Consultation on the Feasibility of Implementing a Common Entrance Examination in Hong Kong*, LAW SOCIETY OF HONG KONG, para. 2.2 (2014), [http://www.hklawsoc.org.hk/survey/cee/HKLS\\_Consultation\\_document.pdf](http://www.hklawsoc.org.hk/survey/cee/HKLS_Consultation_document.pdf). In addition, in its report to LegCo, the “Law Society advised that the proposed CEE might provide a second chance for students who failed in the PCLL examinations to attain a qualification for entrance to the legal profession.” LAW SOCIETY PROPOSAL, *supra* note 65, at para. 34.

71. *Common Entrance Exam*, *supra* note 4.

72. As noted in the consultation paper, this could be achieved through retaining the separate PCLL courses but requiring students to take the same, pooled assessment. The consultation paper noted, however, that this would “affect the providers’ ability to exercise academic autonomy in design and assessment of their courses.” *Examination in Hong Kong*, LAW SOCIETY OF HONG KONG, para. 4.2.3 (2014), [http://www.hklawsoc.org.hk/survey/cee/HKLS\\_Consultation\\_document.pdf](http://www.hklawsoc.org.hk/survey/cee/HKLS_Consultation_document.pdf). The argument that a CEE is justified by the need to achieve consistency has been rejected by the three law schools, which note that all three PCLLs are closely monitored by the legal profession and that a better solution might lie in changing the monitoring methodology and replacing annual monitoring with intensive monitoring every few years as in other jurisdictions. See JOINT SUBMISSION, *supra* note 52, at para. 23.

73. *Consultation on the Feasibility of Implementing a Common Entrance Examination in Hong Kong*, LAW SOCIETY OF HONG KONG, para. 2.2 (2014), [http://www.hklawsoc.org.hk/survey/cee/HKLS\\_Consultation\\_document.pdf](http://www.hklawsoc.org.hk/survey/cee/HKLS_Consultation_document.pdf). The consultation paper identified the challenges of assessing certain skills in a bar examination and outlined the approach in other jurisdictions.

74. STATEMENT OF THE HONG KONG BAR ASSOCIATION ON THE LAW SOCIETY’S DECISION TO IMPLEMENT A COMMON ENTRANCE EXAMINATION FOR QUALIFYING ENTRIES INTO THE

Bar Association also argued that the announcement had “short circuited”<sup>75</sup> the SCLET review and expressed its concern that the CEE would be viewed simply as “a means for the Law Society to control the number of entrants to the profession.”<sup>76</sup>

The University of Hong Kong Faculty of Law responded to the announcement by noting that it was pleased that the Law Society recognized the importance of the PLCC, but arguing that the Law Society had not provided any justification for the necessity of the CEE.<sup>77</sup> In its response to the University of Hong Kong, the Law Society elaborated on its reasons for introducing the CEE, stating that as the regulator of the solicitors’ branch of the profession, the Law Society had an obligation to ensure consistency in professional standards for entrants to the profession and that it was necessary to keep the standards constantly under review “with the increase in the number of law schools and the development of legal education landscape over the years.”<sup>78</sup> In particular:

. . . there is a conflict of interests for the law schools to provide the PCLL course and administer the PCLL examinations to their own students under the current system, for which they charge for tuition. They also provide undergraduate law degrees for which a sizeable portion of their graduates seeking to enter the Hong Kong solicitors’ profession (and indeed the barristers’ profession) would be required to enroll in and be examined upon.

. . . The institutions teaching the PCLL should be separate from the institution administering the examination so as to ensure impartiality in the examinations. The CEE will address this conflict as the Law Society will not be involved in teaching any preparatory course on CEE.<sup>79</sup>

The conflict-of-interest concern is interesting, as it suggests the law schools have a misplaced incentive to pass as many students as possible given that they provide them with undergraduate law degrees. In response to this point, it is reported that the Bar Association has argued that a conflict of interest would arise on the part of the Law Society itself if the criteria for entering the legal

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SOLICITORS’ PROFESSION para. 1 (Jan. 8, 2016), <http://www.hkba.org/sites/default/files/20160108%20-%20Public%20Statement%20of%20the%20Bar%20on%20CEE%20%28e%29.pdf>.

75. *Id.* at para. 6.

76. *Id.* at para. 9.

77. *HKU Law Responds to the Law Society of Hong Kong’s Proposed Common Entrance Examination*, THE UNIVERSITY OF HONG KONG FACULTY OF LAW (Jan. 6, 2016), [http://www.law.hku.hk/Files/20150106\\_HKU%20responds%20to%20Law%20Society%20of%20Hong%20Kong\\_Eng-press.pdf](http://www.law.hku.hk/Files/20150106_HKU%20responds%20to%20Law%20Society%20of%20Hong%20Kong_Eng-press.pdf).

78. *Response to the Statements by the University of Hong Kong on Common Entrance Examination*, THE LAW SOCIETY OF HONG KONG para. 8 (Jan. 11, 2016), [http://www.hklawsoc.org.hk/pub\\_c/news/press/20160111.asp](http://www.hklawsoc.org.hk/pub_c/news/press/20160111.asp).

79. *Id.* at paras. 9-10.



profession were to be set solely by the existing legal profession (i.e., the Law Society).<sup>80</sup> Further, the implementation of the plan would constitute “a means of controlling number and eliminating competition, and [would be] against public interest.”<sup>81</sup>

In terms of the consistency and quality concerns, the Law Society has suggested that by assessing solicitors using the same “rigorous” standards, the CEE will “improve consistency and enhance the quality and competence of the entrants to the solicitors’ profession thereby ensuring that the public interest is served and the confidence of the community in the legal profession is sustained.”<sup>82</sup> In response, the Bar Association has argued that there is “no suggestion and no evidence” of problems with the current practice whereby the three law schools assess students.<sup>83</sup> In this regard, it could be argued that the highly competitive admission standards for PCLL in all of the three universities already goes some way toward achieving the goal of quality and competence as identified by the Law Society.<sup>84</sup>

Interesting parallels exist between criticisms of the former PCL in Singapore and the concerns regarding the current PCLL in Hong Kong. First, some have expressed the concern that the PCLL is an extension of the academic degree, although this would appear to overlook the reforms introduced following the Roper-Redmond Report, under which the PCLL became skills-based.<sup>85</sup> Second, as noted above, concerns have been expressed about having the

80. Stuart Lau, *Hong Kong Law Society Softens Stance on New Exam but Wants a Say in Setting Questions for Students*, S. CHINA MORNING POST (Feb. 15, 2016), <http://www.scmp.com/news/hong-kong/law-crime/article/1913166/hong-kong-law-society-softens-stance-new-exam-wants-say>.
81. *Further Submission to the SCLE on the Decision of the Law Society to Hold the CEE*, HONG KONG BAR ASSOCIATION para. 10 (Feb. 12, 2016), <http://www.hkba.org/sites/default/files/20160212-Hong%20Kong%20Bar%20Association%20of%20further%20submission%20to%20SCLE.pdf>.
82. President’s Message, *Common Entrance Examination*, HONG KONG LAWYER (Feb. 2016), <http://www.hk-lawyer.org/content/common-entrance-examination>.
83. *Further Submission to the SCLE on the Decision of the Law Society to Hold the CEE*, HONG KONG BAR ASSOCIATION para. 9 (Feb. 12, 2016), <http://www.hkba.org/sites/default/files/20160212-Hong%20Kong%20Bar%20Association%20of%20further%20submission%20to%20SCLE.pdf>.
84. In Hong Kong, the minimum admission standard to the PCLL is a good lower-division second class honors undergraduate law degree or its equivalent from a local or overseas common-law school. In practice, the academic standard of students admitted to the PCLL has been constantly on the rise because of competition for places from both local and overseas laws graduates. This was partly attributed to the change of sovereignty of Hong Kong in 1997. Before the handover, law graduates of British law schools could get qualified in U.K. without the need to study PCLL if they wished to practice law in Hong Kong. With the reunification of Hong Kong with China in 1997, all law graduates in the U.K. who intend to practice law in Hong Kong must complete the PCLL, or take the Overseas Lawyers Qualification Examination after admission in the U.K. This has created the “bottleneck” problem for the PCLL, as it was originally designed in the 1970s for law graduates of the University of Hong Kong only.
85. See LAW SOCIETY PROPOSAL, *supra* note 65; Burke, *supra* note 63, at 134 (arguing that the PCC is now “sufficiently skills oriented.”).

PCLL administered by the law schools and the conflict of interest that this is said to create.<sup>86</sup>

In relation to the skills element of the CEE, the Joint University Submission submitted that the “heavy component of skills-training” currently provided under the PCLL could not be replaced entirely by the CEE, noting that “it [would be] difficult to see how a single common qualification examination [would] produce better lawyers if there [were] no preparatory course of study.”<sup>87</sup> If the CEE is introduced as announced by the Law Society, it is likely that the PCLL will become the preparatory course for the examination, along similar lines to the Part B course in Singapore.

In addition, it is relevant to consider the debate about the numbers of entrants to the profession and whether concerns around quality and consistency are simply a proxy for protectionism. Hong Kong has always been an open market for the provision of legal services. However, it is possible that the increase in the number of lawyers from other jurisdictions qualifying to practice Hong Kong law has added to competitive pressures and, therefore, protectionist sentiments. Ironically, if such sentiments exist, the introduction of the CEE may be counterproductive, as it may lead to an increase of foreign lawyers practicing in Hong Kong if there is a surge in the numbers of foreign lawyers taking and passing the CEE. This outcome is not inconceivable, given that Hong Kong is the only jurisdiction in the whole of China whose legal profession is open to foreign law firms and lawyers without heavy government regulation. As the China market is the focus of many international law firms, the latter have every incentive to increase their presence and the number of foreign lawyers becoming qualified in Hong Kong through CEE in order to serve the Chinese market.

Finally, it is interesting to note that the recent debates in Hong Kong do not appear to have involved any calls for practice skills to be strengthened in the academic law degree curriculum. This is perhaps not surprising given that practice skills are the domain of the PCLL, which is delivered by the law schools themselves. That said, whether practice skills should be strengthened in the curriculum and whether law schools should play a more active role along the lines suggested by the recent calls in Singapore remain open questions.

## V. Australia

In Australia, the importance of developing legal skills within the law school curriculum, including through clinical legal education, was noted in the Pearce Report, which was presented to the Commonwealth Tertiary

86. Arguably, these concerns are mitigated by the fact that all PCLL courses are monitored by the Law Society, whose external examiners vet the distinction, borderline, and failed exam scripts each year. Consequently, the law schools do not have unlimited discretion to run the PCLL and determine who should pass.

87. JOINT SUBMISSION, *supra* note 52, para. 30.

Education Committee in 1985.<sup>88</sup> This report is said to have had a considerable impact in terms of generating “critical reflection on the nature and content of law courses and a commitment to skills development and quality teaching.”<sup>89</sup> In 1999, the Australian Law Reform Commission (ALRC) issued a discussion paper on the review of the federal civil justice system,<sup>90</sup> which noted that there was a “trend towards increasing the proportion of time and resources devoted to ‘professional skills training,’ whether through clinical or classroom based methods” and recommended that “consideration [be] given to the articulation of clinical and skills training programs at the undergraduate level with subsequent [practical legal training (PLT)] programs—and, indeed, whether an expansion of the role of university PLT courses might obviate the need for a separate PLT stage.”<sup>91</sup> In 2000, the ALRC report that followed recommended that “[i]n addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility.”<sup>92</sup>

As noted by the ALRC in its Report 89 of 2000:

Practical legal training (PLT) has largely been the preserve of the profession, whether delivered directly through articulated clerkships (for solicitors) or pupillage programs (for barristers), or through specially designed institutional courses of instruction, such as those mounted by the College of Law in New South Wales and the Leo Cussen Institute in Victoria. Beginning in the 1970s, some of these PLT institutions affiliated with universities—at least in part to take advantage of Commonwealth funding for universities and students. More recently, a number of university law schools have moved into the direct provision of PLT (in competition with the traditional providers), mainly in the form of ‘add-on’ programs available after the completion of LLB studies, but sometimes integrated within the basic law degree program. Motivation for this move is mixed—in part, it is driven by the desire to provide a service to existing students as well to attract new students; in part, by the imperatives of federal arrangements; and in part by an interest in experimenting with new pedagogical approaches.<sup>93</sup>

88. Chief Justice Robert French AC, *Legal Education in Australia—A Never Ending Story*, AUSTRALASIAN LAW TEACHERS’ ASSOCIATION CONFERENCE 19-21 (July 4, 2011), <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcjo4july11.pdf>.

89. *Id.* at 21.

90. *Review of the Federal Civil Justice System*, AUSTRALIAN LAW REFORM COMMISSION (July 19, 1999), <http://www.alrc.gov.au/dp-62>.

91. *Id.* at paras. 3.16 & 3.48.

92. *Managing Justice: A Review of the Federal Civil Justice System - Report 89*, AUSTRALIAN LAW REFORM COMMISSION para. 2 (Feb. 17, 2000), <http://www.alrc.gov.au/report-89>.

93. *Id.* at para. 2.9 (citations omitted).

The traditional system of “articled clerkships” was abandoned in Victoria in 2008, when the traineeship model was introduced.<sup>94</sup> This followed a review of legal education by the Department of Justice in Victoria, which recommended that “trainees be required to undergo a period of formalised practical legal training (PLT), in addition to workplace components.”<sup>95</sup> In Australia, the pathway to admission is now as follows, with the supervised legal practice period that is now required by statute effectively replacing the traditional “articled clerkships”:<sup>96</sup>



Criticism has been levelled that Australia’s current academic requirements, which are designed around the Priestley Eleven core subjects,<sup>97</sup> “stultify law curricula by discouraging innovation, limiting student choice and leaving little teaching time available for developing lawyering skills and professional values.”<sup>98</sup> Further, as noted by the Chief Justice of the High Court of Australia,

94. Gaye T. Lansdell, *Have We “Pushed the Boat out too Far” in Providing Online Practical Legal Training? A Guide to Best Practices for Future Programs*, 19 *LEGAL EDUC. REV.* 149 (2009). Lansdell queries the adoption of online PLT courses and suggests that “that a blended design, with a combination of online components supplemented with regular face-to-face sessions and feedback on assessment tasks, is required to instil the necessary professional legal skills and values.” *Id.* at 150.
95. Lansdell, *supra* note 94, at 149. The report is also known as the “Campbell Report.” Susan Campbell, *Review of Legal Education Report: Pre-Admission and Continuing Legal Education* (2006). For a background to the report, see also *National Uniform Law Legal Services Council Admissions Committee, Submission in Relation to Proposed Admission Rules*, THE COLLEGE OF LAW (Jan. 30, 2015), which states in part “[t]he Campbell Report recommended that the then system of articles should be abolished but concluded nonetheless that good quality workplace experience was still the best method for equipping a person for legal practice. It recommended the adoption of a new system of traineeships based on a then recently introduced Queensland model which made an attempt to incorporate a reliable method of assuring consistency of standards and outcomes.” *Id.* at 5.
96. Recent concerns have been expressed about the workplace component for PLT programs and the lack of structured arrangements for this. See Jeff Giddings and Michael McNamara, *Preparing Future Generations of Lawyers for Legal Practice: What’s Supervision Got to Do With It?* 37 *U.N.S.W. L.J.* 1226 (2014).
97. Eleven compulsory areas of knowledge were identified in a discussion paper written by Justice Priestley in 1992. See French, *supra* note 88, at 21-22. The eleven areas are as follows: criminal law and procedure, torts, contract, property (including Torrens system land), equity (including trusts), administrative law, federal and state constitutional law, civil procedure, evidence, company law and professional conduct (including basic trust accounting). “Admitting authorities in Australia subsequently adopted the Priestley Eleven as the basis of the academic component of the legal education required for admission.” *Id.* at 22.
98. *Rethinking Academic Requirements for Admission*, LAW ADMISSION CONSULTATIVE COMMITTEE 21 (26

Chief Justice French, the approach “has been compared unfavourably with the approach taken by the McCrate Report, commissioned by the American Bar Association in 1992” on the basis that the latter approach was “oriented around what lawyers need to do, while the Australian position was said to be anchored around outmoded notions of what lawyers need to know”<sup>99</sup> In 2010, the Law Admissions Consultative Committee released a paper in which it recommended that “[i]n addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility.”<sup>100</sup>

Before the most recent reforms, there had been debate in Australia over the possibility of introducing a bar examination. Some writers have noted the limited benefits of an American-style bar examination. Garkawe, for example, has noted that the basic argument behind an American-style bar exam is that it is administered by a body independent of the law schools and thus assures the public of the competency of admitted graduates.<sup>101</sup> However, Garkawe suggests that there is little empirical evidence that those who pass the bar in America are necessarily “better lawyers” than those who have difficulty passing the bar. In addition, Garkawe also argues that the bar has had a “negative effect on the quality of American legal education, acting as a discouragement to diversity and the incorporation of greater critical and theoretical approaches to the law.”<sup>102</sup> Instead, Garkawe argues for an American-style law school accreditation system as a form of external control.<sup>103</sup>

By contrast, in advocating that a bar examination should be introduced in New South Wales, Thompson has argued that the proliferation of law schools risks a downward shift in the quality of graduates and that the risk is limited to the extent that the legal profession “screens out underqualified law school graduates.”<sup>104</sup> The challenge with professional training programs, Thompson argues, is that they “do not provide an effective screen of core analytical skills for the legal profession.”<sup>105</sup> Further, “[w]hile certain professional coaching schools distort the effectiveness of the [bar] exam, the exam nonetheless weeds

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February 2010), <http://www.lawcouncil.asn.au/LACC/images/pdfs/Re-thinkingAcademicRequirementsforAdmission.pdf>.

99. French, *supra* note 88, at 23 (referring to the Australian Law Reform Commission (‘ALRC’) characterization in its Discussion Paper Number 92).

100. French, *supra* note 88, at 25 (referring to the ALRC’s Report 89, *supra* note 92).

101. Sam Garkawe, *The Proliferation of Law Schools in Australia—Should Australia Adopt the American Bar Exam Model?* 13 J. PROF. LEGAL EDUC. 23, 37 (1995).

102. *Id.* at 37.

103. *Id.* at 38.

104. Joshua Thompson, *Benefits of a Bar Exam*, L. SOC. J. 58, 58 (2003).

105. *Id.*

out the weakest performers....”<sup>106</sup> Thompson points to the experience in the United States, where “the bar exam is generally considered by the American profession to be even-handed, consistent, challenging, and fundamentally meritocratic....”<sup>107</sup>

Australia represents an interesting contrast to Singapore and Hong Kong insofar as there is essentially no gatekeeping except, perhaps, admission to the law degree itself. And even this does not represent much of a gate in view of the proliferation of law schools over the past two decades and the relative ease with which students can enroll in law degrees. Like Singapore, however, Australia has experienced calls for practice skills to be strengthened within the law school curriculum.

## VI. Comparative Analysis and Conclusion

The experience in the three jurisdictions under examination reveals the existence of three pathways to admission:

- A bar exam with a compulsory preparatory course (Singapore);
- A professional admission course, entry to which is subject to quotas and competitive enrollment (Hong Kong);
- A practical legal training (PLT) course that provides open access to all law graduates (Australia).<sup>108</sup>

An important point of distinction between Australia and the other two jurisdictions is that a second gatekeeper—namely, a second gatekeeper after the law degree—exists in both Singapore and Hong Kong. In Singapore, the preparatory course and the bar examination serve as the second gatekeeper. This is because admission to the preparatory course is limited to domestic students with the prescribed grade of second class honors or above and to foreign students who have graduated with law degrees from recognized foreign universities. In addition, the bar examination is rigorous, and not all candidates are successful in passing it. In Hong Kong, the pass rate for the PCLL is relatively high. However, a second gatekeeper exists by virtue of the fact that the numbers of entrants to the PCLL is capped and, consequently, the law schools impose minimum thresholds for entry. By contrast, all law graduates in Australia are able to enroll in a PLT course—provided either by the law schools themselves or by independent vocational training providers—and gain admission after completing the course. In this sense, the focus of the course is on preparing graduates for practice rather than in assessing competence or quality.

<sup>106.</sup> *Id.*

<sup>107.</sup> *Id.*

<sup>108.</sup> A similar approach is adopted in the U.K.

Interesting parallels exist between the former Practical Course in Law (PCL) in Singapore and the concerns regarding the current PCLL in Hong Kong. First, there is evidence that the introduction of a bar exam in Singapore was driven partly by the inadequacies of the PCL in terms of providing graduates with the necessary practice skills and partly by criticism that it was just an extension of the academic degree. Second, concerns were expressed about having the admission course administered by the law schools and the conflict of interest that this is said to create.

All three jurisdictions require workplace experience. In the case of Singapore and Hong Kong, such workplace experience is required before admission to practice. In Australia, on the other hand, the workplace experience follows admission to practice, but a period of supervised legal practice is required to be completed before a lawyer has an unlimited practicing certificate.

The comparative analysis raises some interesting questions. A central question is whether professional admission courses should serve as a gatekeeper in terms of assuring quality and competence or whether the professional admission courses should serve simply as preparatory courses for admission to the legal profession as in Australia. Related to this question is the fundamental question of whether the state or the market should regulate the supply of lawyers. Each approach has its perceived disadvantages. The first approach has a tendency to limit the number of entrants into the market and gives rise to concerns about access and protectionism. The second approach gives rise to concerns about quality and competence and also the limited opportunities for those who are actually admitted to practice. Arguably, the concern over limited job opportunities becomes greater as law schools proliferate, as opportunities for fresh law graduates in practice become more limited, and as the legal profession encounters challenges in terms of retaining good lawyers and dealing with increasing competitive pressures in the market.

Interestingly, the current debate in Hong Kong over the introduction of the CEE reflects tensions that are pulling in both directions, as reflected in the arguments concerning the need to increase competency and quality while at the same time achieving greater access for law graduates.<sup>109</sup> A number of interesting countervailing trends and contradictions emerge from the above analysis. First, although in all three jurisdictions the law degree has become more of a liberal arts degree than a professional degree over the past two decades or so and has become disconnected from legal practice in many respects, the legal profession has increasing expectations that the law degree will fulfill its

109. To some extent, this reflects broader issues about how lawyers are regulated and whether they should be perceived as service providers or members of a special profession that owes duties to society. See Godwin, *Barriers*, *supra* note 9. It also reflects calls in Singapore for legal education to “cultivate healthy attitudes towards community service” and the assertion that the profession “is a common calling—not a trade.” Lim & Ong, *supra* note 16, at 87. Irrespective of the perceived role of lawyers in society, a reality that exists in all of the jurisdictions examined in this paper is that an increasing number of local and international law firms are employing foreign lawyers who do not have the qualification to practice local law but act as consultants or paralegals to advise on cross-border transactions.

function as a professional degree and as a means of preparing graduates for practice. As noted above, this results partly from the increasingly competitive nature of the profession, the decrease in the opportunities for junior lawyers to receive on-the-job training, and the concomitant need for junior lawyers to develop practice skills sooner.

Second, although the past two decades or so have seen a significant increase in the rigor and systemization of professional training courses before admission, the perceived need for law schools to incorporate practice skills into the curriculum is increasing. As reflected in the discussion in Part II, this is in large part a result of the expectations that the legal profession has of the academic degree. It may also reflect difficulties in distinguishing between the law degree and the professional training courses. Irrespective of the rigor with which professional or vocational training is delivered, we would argue that there is more that could be done in terms of incorporating practice skills into the curriculum and preparing graduates for practice as suggested by the recent Report of the 4<sup>th</sup> Committee on the Supply of Lawyers in Singapore. To a large extent, this would involve law schools teaching substantive law within a broader practice-based context. Third, although markets and governments around the world increasingly expect the legal profession to operate as a regular service industry, countervailing forces exist in some jurisdictions as the legal profession adheres to the traditional view of itself as a profession or vocation and to the notion that admission numbers should be restricted to achieve minimum competency and quality standards and protect the public interest. In jurisdictions such as Singapore and Hong Kong, this has led to a view by some that the bar exam should perform the function of a second gatekeeper.

Finally, competing priorities often come into play in relation to admission requirements, including the need, on the one hand, for the process to meet access requirements and, on the other hand, to ensure that the appropriate levels of competence and quality are achieved. The first need (i.e., the access need) works against protectionism and in favor of allowing the market to regulate numbers. The second need (i.e., the need to achieve the appropriate levels of competence and quality) works in favor of treating the legal profession as a special profession and in favor of the argument that a second gatekeeper is appropriate. The challenge with the concept of a second gatekeeper, however, is that it appears to run counter to the globalization of legal education and legal practice.

What does all of this mean for legal education? As Professor Simon Chesterman, Dean of the National University of Singapore Faculty of Law, has noted, “[l]egal education has always borne an ambiguous relationship to the practice of law.”<sup>110</sup> At the very least, we would suggest that legal education should not be disconnected from legal practice in its myriad forms and contexts. In addition, while it is important for law schools to strengthen the

110. Simon Chesterman, *The Globalisation of Legal Education*, 2008 SING. J. LEG. STUD. 58, 59 (2003).



transactional and clinical focus, it is also critical for them to teach substantive law, to strengthen general skills such as analysis, problem-solving and research, and also to maintain the availability of subjects that have a close relevance to legal practice.

In many ways, all of this is an argument for law schools to continue to do what they have always done best: namely, teaching legal doctrine in a rigorous way that helps student develop strong analytical and problem-solving skills across all subjects within a curriculum that is supplemented by a balance of, on the one hand, transactional and clinical law subjects, and, on the other hand, critical legal theory.