

# Different ideas. Different directions.

by

Jack Burke\* and Hugh Zillmann\*\*

As foreshadowed in earlier presentations on this topic, it will no longer be necessary to undertake any practical legal training (“PLT”) in order to gain admission as a solicitor in England and Wales and demonstration of acquisition of sufficient competence, in addition to completion of a period of recognized training (formerly known as a training contract), will now be solely contingent on the passing of a common entrance type exam on this area. By way of contrast, entrance to the Bar in England and Wales will still require completion of PLT, although some more flexible models of PLT are likely to be adopted there. Additionally, there is a move toward greater use of PLT in the USA. Finally, this presentation will consider important aspects of the educational rationale behind PLT and will argue that it should be retained in Hong Kong and other common law jurisdictions.

## Introduction

Hong Kong is currently awaiting publication of a report by the Standing Committee on Legal Education in Hong Kong that will contain a wide ranging review of legal education and training in Hong Kong.<sup>1</sup> A key area for this review will be whether the Post Graduate Certificate of Laws Programme (“PCLL”) sufficiently meets the changing needs of the legal landscape in Hong Kong and whether or not other alternatives to the PCLL are necessary.<sup>2</sup> In particular, this review will likely critique a decision made by the Law Society of Hong Kong that law students should be required to undertake a common entrance exam prior to admission beginning in 2021, although this will not act as a substitute for completion of the PCLL.<sup>3</sup> This paper will examine the traditional underlying

---

<sup>1</sup> An interim report has been released for consideration by the Standing Committee but is not available for wider discussion.

<sup>2</sup>\*Senior Teaching Fellow, School of Law City University of Hong Kong.

\*\* Assistant Professor and PLT Programs Director, Faculty of Law, Bond University.

Standing Committee on Legal Education and Training *Consultation Paper*, pp.2-3 (undated circa), available at <http://www.scler.gov.hk> (accessed on 9 June 2017).

<sup>3</sup> Legislative Council Secretariat, *Panel on Administration of Justice and Legal Services Background. Brief Prepared by the Legislative Council Secretariat for the Meeting on 25 April 2016. The Law Society of Hong Kong’s Proposal to Introduce a Common Entrance Examination in Hong Kong* (20 April 2016) LC Paper No.

rationale for the provision of PLT as a mandatory requirement for training lawyers in common law jurisdictions, namely the inculcation of necessary knowledge, skills and values to properly equip those entering the legal profession to meet the demands of its stakeholders. It will also explore contemporary decisions concerning PLT in England and Wales and the USA and the extent to which they offer guidance in determining the decisions which should be made in relation to PLT in Hong Kong, as well as shedding light on potential commonalities for best practice for PLT in all common law jurisdictions. In addition, this paper will consider developments which will shape the operation of legal practice in Hong Kong, including what has been termed disruptions to legal practice and the advent of the One Belt, One Road Initiative. Finally, this paper will identify the future direction that legal education in Hong Kong should take.

## **I. PRACTICAL LEGAL EDUCATION IN ENGLAND AND WALES**

A distinguishing feature of training and education in England was the creation of a regulatory objective in the Legal Services Act 2007 to encourage a “diverse” legal profession.<sup>4</sup> The overall regulator of training and education of the legal profession, the Legal Services Board, has also issued statutory guidance on this area, requiring that education and training be ‘outcomes’ rather than process focused, as well as being flexible, balanced (in relation to the expectation of standards at authorization and concerning obligations between entities and individuals), and devoid of unnecessary restrictions to entry.<sup>5</sup> This has had a significant impact on the findings of consultations and reports in this area which have appeared in recent years and which are discussed below.

A major report was issued in June 2013 (“The LETR Report”) which followed on from a research project into the system of legal education and training and its regulation called the Legal Education and Training Review in England and Wales.<sup>6</sup> This report was commissioned by various branches of the legal profession,

---

CB(4)884/15-16(05) para 24, available at <http://www.legco.gov.hk/yr1516/english/panels/ajls/papers/ajls20160425cb4-884-5-e.pdf> (accessed on 9 June 2017).

<sup>4</sup> Section 1(f) *Legal Services Act 2007*.

<sup>5</sup> Legal Services Board, Statutory Guidance on Legal Education and Training (4 March 2014) 1 at [www.legalservicesboard.org.uk/.../2014/20140304\\_LSB\\_Issues\\_Statutory\\_Guidance\\_...](http://www.legalservicesboard.org.uk/.../2014/20140304_LSB_Issues_Statutory_Guidance_...) (accessed 9 September 2017).

<sup>6</sup> Legal Education and Training Review (‘LETR’), *Setting Standards. The Future of Legal Services Education and Training Regulation in England and Wales* (June 2013), para 1.3, available at <http://www.lettr.org.uk/the-report/> (accessed 9 June 2017).

including those with responsibility for the regulation of professional education and training for solicitors, the Solicitors Regulatory Authority (“SRA”) and Bar Standards Board (“BSB”).<sup>7</sup>

In general, the LETR Report accepted that the current regulated system of legal education and training in England worked relatively well. More particularly, it was of the view that, “There is no evidence that the system, or any one professional regime, is fundamentally ‘broken’”.<sup>8</sup> It did note a contrary view, being that around 30% of solicitors and barristers considered that the BPC and the LPC were not fit for purpose.<sup>9</sup> On the other hand, it stated that “Concerns about consistency of standards were raised primarily with respect to the solicitors’ profession.”<sup>10</sup>

A number of criticisms were levelled in the LETR at the LPC including that:

- (1) Its broadly generalist curriculum lacks utility in an increasingly specialised legal profession.<sup>11</sup>
- (2) There was inconsistency of standards of assessment amongst LPC providers.<sup>12</sup>
- (3) A lack of flexibility existed in its delivery.<sup>13</sup>
- (4) The cost of the LPC is high which hinders access to it.<sup>14</sup>

The LETR Report also noted that respondents were generally of the view that the BPTC was successful in its role in advocacy training.<sup>15</sup> More negative perceptions of the BPTC, a number of which mirror to some extent those of the LPC, were deficiencies in the provision of the centralized examination system in the BPTC,<sup>16</sup> shortages of pupillages for many BPTC graduates,<sup>17</sup> the potential impact of its entry system of aptitude testing in restricting diversity in it,<sup>18</sup> and the prohibitive costs of the BPTC resulting in restricted access to it.<sup>19</sup>

---

<sup>7</sup> *Ibid.*, para 1.1.

<sup>8</sup> *Ibid.*, para 2.175.

<sup>9</sup> *Ibid.*, para 2.59.

<sup>10</sup> *Ibid.*, para 7.29.

<sup>11</sup> *Ibid.*, para 2.60.

<sup>12</sup> *Ibid.*, para 2.119.

<sup>13</sup> *Ibid.*, para 7.69.

<sup>14</sup> *Ibid.*, para 7.39.

<sup>15</sup> *Ibid.*, para 2.89.

<sup>16</sup> *Ibid.*, para 2.123.

<sup>17</sup> *Ibid.*, para 2.137.

<sup>18</sup> *Ibid.*, para 7.53.

<sup>19</sup> *Ibid.*, para 7.39.

Certainly, the LETR Report did not advocate abandoning the current system of formalized professional training for solicitors and barristers, but it did seek reform in a number of areas. In order to promote flexibility amongst solicitors, it advocated the development of greater flexibility in the delivery of existing systems to promote greater specialization,<sup>20</sup> as well as alternative pathways which would also have the benefit of reducing costs, including consideration of a system of apprenticeships as direct entry points into that arm of the profession.<sup>21</sup>

The LETR Report was of the view that access and costs improvements for the vocational component for both barristers and solicitors could be obtained through greater integration between the workplace and vocational learning and the provision of joint academic and vocational degrees.<sup>22</sup>

In order to ensure consistency of standards in communications skills based training in the vocational component for both solicitors and barristers e.g. advocacy, interviewing and drafting etc. the LETR Report also saw it as essential that thorough learning outcomes were prescribed and performance standards were utilized to accurately determine that those joining the profession had adequately mastered these necessary skills.<sup>23</sup> The LETR Report believed that this outcome could only be achieved if a sufficient degree of standardization of assessment was instituted and that a Common Entrance Exam (“CEE”) can provide a rigorous assessment mechanism to ensure this occurs. The exact parameters of such a CEE were not considered, and the LETR Report’s discussion of it was directed more toward it being used in the LPC, where there is currently no centralized assessment operating in respect of its providers. In considering the value of introducing a CEE, the LETR Report was of the view that this type of model can provide assurance of standardization and integrity but may lack validity in relation to assessment of practice skills and also might break the connection between training and assessment.<sup>24</sup>

### **A. Training of Solicitors in England and Wales**

---

<sup>20</sup> *Ibid.*, para 5.126.

<sup>21</sup> *Ibid.*, para 7.40.

<sup>22</sup> *Ibid.*,

<sup>23</sup> *Ibid.*, paras 7.29 and 7.32 and 7.83.

<sup>24</sup> *Ibid.*, para 4.127– 4.129.

After the release of the LETR, the SRA issued a number of consultation papers that envisaged making PLT optional and instead relying on centralised assessment to guarantee that students possessed all requisite skills before becoming solicitors.<sup>25</sup>

This leads onto a consideration of the deficiencies of summative assessment (or a final test without feedback) as opposed to formative assessment. The theory of formative assessment/training is said to apply wherever multiple criteria are used in making judgments about the quality of student responses.<sup>26</sup> The theory is stated to have less relevance for outcomes in which a student response may be assessed simply as being either ‘correct’ or ‘incorrect’. Feedback is the defining characteristic of formative assessment, insofar as what it seeks to achieve is a developmental outcome, i.e. rather than simply being categorised as ‘wrong’, what is sought to be achieved is a result where the student learns how to do something better.<sup>27</sup>

The premise is that students, to be able to improve their performance at a particular task or skill, must develop the capacity to monitor the quality of their own work during actual production. In consequence “this in turn requires that students possess an appreciation of what high quality work is, that they have the evaluative skill necessary for them to compare with some objectivity the quality of what they are producing in relation to that higher standard, and that they develop a store of tactics or moves which can be drawn upon to modify their own work”.<sup>28</sup> The argument in support of this proposition is that these skills can be best developed by the provision of “direct authentic evaluative experience for students”.<sup>29</sup> The argument against summative instructional systems is that they do not, by their nature, make “explicit provision for the acquisition of evaluative expertise”. The

---

<sup>25</sup> Solicitors Regulation Authority, Policy Statement. *Training for Tomorrow. Ensuring the Lawyers of Tomorrow Have the Skills of Today* (16 October 2013) 1 available at <https://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page> (accessed 14 June 2017); Solicitors Regulation Authority, *Training for Tomorrow. A Competence Statement for Solicitors* (20 October 2014) 1, available at <https://www.sra.gov.uk/sar/news/press/competence-statement-consultation/page> (accessed 14 June 2017); Solicitors Regulation Authority, *Training for Tomorrow: Assessing Competence* (7 December 2015), available at <https://www.sra.org.uk/sra/consultations/t4t-assessing-competence.page> (accessed 16 June 2017); Solicitors Regulation Authority, *A New Route to Qualification: The New Solicitor’s Qualifying Examination (SQE)* (October 2016), available at <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#download> (accessed 16 June 2017).

<sup>26</sup> D R Sadler, “Formative Assessment and the Design of Instructional Systems” (1989) 18(2) *Instructional Science* 119.

<sup>27</sup> *Ibid.*, p.121.

<sup>28</sup> *Ibid.*, pp.130-134.

<sup>29</sup> *Ibid.*, p.140.

consequence of this is that such systems of education are “deficient, because they set up artificial but potentially removable performance ceilings for students”.<sup>30</sup>

The Massachusetts Bar Association has commented favourably upon the potential application of the so-called ‘medical model’ of clinical practical training to the training of entry level legal practitioners.<sup>31</sup> In this regard, in a forthcoming paper,<sup>32</sup> Professor Neil Hamilton undertakes an extensive analysis of how the medical educators (as a consequence of reforms in 1999) set about a review and reform of the way in which the discipline of medicine was taught in the United States in order to meet competency-based learning outcomes, particularly with respect to assessment. Rather unsurprisingly, the model(s) adopted (for both instruction and assessment) were largely reflective of what might be described as formative assessment/training.<sup>33</sup> In his view, the experience of medical educators, acquired over fifteen years of experience in meeting the competency-based standards, were that formative assessments (including self-assessments) were vital to ensure that the necessary competencies were met.<sup>34</sup>

Insofar as any conclusion may be drawn from Professor Hamilton’s very detailed analysis of how competencies are defined (so that educational structures may be adopted or constructed to ensure that those being instructed meet those competencies),<sup>35</sup> it is that educators must look to how the style and content of what is being taught will ultimately benefit those who are stakeholders in what might be broadly described as ‘legal education’.

## **B. The End of Compulsory PLT for Solicitors in England and Wales**

Nevertheless, the SRA announced on 25 April 2017 in a press release and accompanying document (“the April 2017 Document”) that it intends to implement

---

<sup>30</sup> *Ibid.*, p.142. See also, H D Black “Assessment for Learning” in D L Nuttal (Ed), *Assessing Educational Achievement* (Falmer, 1989).

<sup>31</sup> *Report of the Task Force on Law, the Economy and Underemployment*, (17 May 2012 Massachusetts Bar Association) 1-4.

<sup>32</sup> *Ibid.*, p.4.

<sup>33</sup> N Hamilton, “Professional-Identity/Professional-Formation/Professionalism Learning Outcomes: What Can We learn about assessment from Medical Education?” (30 April 2017) 13 *University of St. Thomas Law Journal* (forthcoming 2017) available at <https://www.slideshare.net/.../what-law-can-learn-about-assesment-from-medical-educ...> (accessed on 2 September 2017).

<sup>34</sup> *Ibid.*, p.37.

<sup>35</sup> *Ibid.*, p.19.

a number of the key ‘reforms’ to vocational training.<sup>36</sup> Namely, abolition of the requirement to undergo the LPC or any PLT<sup>37</sup> and the introduction of an examination to test PLT (“the SEQ 2”) in September 2020.<sup>38</sup> In doing so, it expressed the importance of allowing flexible vocational learning alternatives, while at the same time achieving consistency of standards.<sup>39</sup>

There is almost nothing in the April 2017 Document in the way of any pedagogical justification for removing the current vocational training requirements, as opposed to instituting more rigorous quality control measures to deal with any perceived deficiencies in the existing model. At best, it largely comprises a bare assertion that publication of data by the SRA on success rates of providers will guarantee that future training providers will be of the necessary standard.<sup>40</sup> The document also fails to provide any details about how the prospective costs and administrative problems associated with the SEQ 2 will be addressed beyond a vague assurance that they will be fixed before it is rolled out.<sup>41</sup>

Strikingly, another document the SRA published at or around the same time as the April 2017 document, the Solicitors Qualifying Examination (SQE) Equality, Diversity and Inclusion Risk Assessment (“the Risk Assessment Document”) accepts that there may be perceptions about the quality of some providers in the new system, with consequential negative effects to the employability of those from disadvantaged backgrounds who undertake non-traditional vocational programmes. The Risk Assessment Document states rather unconvincingly that “mitigations” which will be introduced, such as publication of relevant data about these new providers, will help obviate these problems. The authors of the Risk Assessment Document also do not appear able to guarantee that the new system will be less expensive than the current one.<sup>42</sup> So, rather counterintuitively, there is a real possibility that the new process may actually hinder access, diversity and standards, especially taking into account certain pedagogical, logistical,

---

<sup>36</sup> Solicitors Regulation Authority, *A New Route to Qualification: The Solicitors Qualifying Examination. Summary of Responses and Our Decision on Next Steps* (April 2017), available at <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page> (accessed on 18 June 2017).

<sup>37</sup> *Ibid.*, p.10.

<sup>38</sup> *Ibid.*, p.2.

<sup>39</sup> *Ibid.*, p.5.

<sup>40</sup> *Ibid.*, p.10.

<sup>41</sup> *Ibid.*, pp.12-14.

<sup>42</sup> Solicitors Regulation Authority, *Solicitors Qualifying Examination (SQE) Equality, Diversity and Inclusion Risk Assessment* (April 2017) 4-6, available at <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page> (accessed on 1 July 2017).

costs-based and administrative problems which have arisen in the more limited form of centralised system of assessment run by the BSB.<sup>43</sup>

### C. Education of Barristers in England

Following on from the publication of the LETR, the BSB has also been reviewing the vocational stage of legal training of barristers in England.

After a number of further consultation papers,<sup>44</sup> in March 2017, the BSB published a policy statement on Bar Training (“the BSB 2017 Policy Statement”).<sup>45</sup> The BSB 2017 Policy Statement, has taken a relatively measured approach to reform of the existing policy for education and training as compared to the SRA, in that there is no suggestion in this document that vocational training would be optional, or that it will introduce a summative assessment of the scope matching the SEQ 2. In general, and in contrast to the SRA’s position, the BSB has taken the view that removal of any quality controls on the training of barristers would have a substantive negative effect in that it could “cause confusion for prospective barristers and training providers, damage diversity and increase regulatory cost.”<sup>46</sup>

It envisaged instead that there would be greater variety in the vocational routes those seeking to join the Bar could take. The proposed routes were listed as follows:

- (1) The existing BPTC (at least for a transitional period) with some strengthening of teaching and assessment of legal ethics;<sup>47</sup>

---

<sup>43</sup> Bar Standards Board, *Future Bar Training. Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training* (July 2015) 33 available at <https://www.barstandardsboard.org.uk/> (accessed on 14 November 2017).

<sup>44</sup> The Bar Standards Board, *Future Bar Training* (February 2015), available at <https://www.barstandardsboard.org.uk/> (accessed 20 June 2017); The Bar Standards Board, *Future Bar Training* (February 2015), available at <https://www.barstandardsboard.org.uk/> (accessed 20 June 2017); The Bar Standards Board, *Future Bar Training. Consultation on the Future of Training for the Bar: Future Routes to Authorisation. Summary of Responses* (March 2017) available at <https://www.barstandardsboard.org.uk/> (accessed 23 June 2017).

<sup>45</sup> The Bar Standards Board, *The BSB Policy Statement on Bar Training* (23 March 2017), available at [https://www.barstandardsboard.org.uk/.../032317\\_fbt\\_-\\_policy\\_statement\\_version\\_fo](https://www.barstandardsboard.org.uk/.../032317_fbt_-_policy_statement_version_fo) (accessed on 23 June 2017).

<sup>46</sup> *Ibid.*, para 32.

<sup>47</sup> *Ibid.*, paras 21-22.

- (2) A two-part vocational course where students would only be required to pass an assessment for the knowledge based areas (Part 1) before entering Part 2 which would focus on skills and ethics;<sup>48</sup>
- (3) A combined academic/PLT model such as the Northumbria MLaw.<sup>49</sup>
- (4) A modular or apprenticeship based model.<sup>50</sup>

The BSB did not provide any detail on the most significant of these changes, being the modular or apprenticeship model, but was waiting to hear concrete proposals by intended participating stakeholders.<sup>51</sup> A challenge then for the BSB will be how to rigorously ascertain the quality of the pedagogical standards of these essentially untested routes before they may be launched and finding a method of ensuring there is an affordable mechanism to assure the quality of so many different models if and when this is done.<sup>52</sup> Broadly speaking, the BSB's policy on education and training, through its retention of a place for vocational training, appears to be a relatively measured approach as far as the preservation of standards are concerned. By providing an alternative set of potentially less costly but educationally robust options it is also rationally and responsibly meeting its regulatory obligations of ensuring that the legal education and training of barristers is flexible, accessible and affordable.<sup>53</sup>

## USA

Until recently, and in general, graduates in the USA have not had to undergo a PLT program, or certainly anything substantial of that nature, prior to admission.<sup>54</sup> Admission was contingent on applicants satisfying the moral character and fitness requirements, (in the main) having completed a law degree (ordinarily with an ABA approved Juris Doctor) and then passing a written bar exam that was limited

---

<sup>48</sup> *Ibid.*, para 23.

<sup>49</sup> *Ibid.*, paras 29-30.

<sup>50</sup> *Ibid.*, para 31.

<sup>51</sup> *Ibid.*,

<sup>52</sup> James Welsh 'BPTC Futures' *Counsel* December 2016, available at [www.barcouncil.org.uk/](http://www.barcouncil.org.uk/) (accessed on 17 September 2017).

<sup>53</sup> The Bar Standards Board, *The BSB Policy Statement on Bar Training 4* available at <https://www.barstandardsboard.org.uk/> (accessed on 14 November 2017).

<sup>54</sup> National Conference on Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, *Comprehensive Guide to Bar Admission Requirements 2017*, 17-18, available at [https://www.americanbar.org/groups/legal\\_education.html](https://www.americanbar.org/groups/legal_education.html) (accessed 25 June 2017).

to testing their knowledge of doctrinal courses such as contract and tort and an examination in Professional Conduct.<sup>55</sup>

The MacCrate Report and the Stuckey Report both concluded that, because US state bar exams fail to test skills such as interviewing and advising and negotiation and because these were also not taught adequately in the law school curriculum, those entering practice lacked sufficient practical skills and attendant professionalism to meet their client's needs.<sup>56</sup> Accordingly, both these reports argued the case for changing the focus of the education which US law students received from its academic slant to a greater emphasis on practical subjects.<sup>57</sup> Consistent with its emphasis on the importance of quality formative assessment,<sup>58</sup> the Stuckey Report further suggested that PLT is a necessary vehicle for skills based learning, as an experiential setting allows for an opportunity to repeat skills as needed in a framework that provides necessary feedback, an essential concomitant to the ability to move beyond a mechanistic ability to copy certain techniques to a more informed understanding of any applicable norms and values.<sup>59</sup> Quoting from the Stuckey Report, "One cannot become skilled simply by reading about skills or watching others perform lawyerly tasks. One must perform the skills repeatedly, preferably receiving expert feedback."<sup>60</sup> The Carnegie Report, published shortly after the Stuckey Report, saw value in the ability of a law school to use formative feedback to expressly interweave ethical issues into the learning process to better develop students' sense of professional responsibility.<sup>61</sup>

Other relatively recent research in the United States (referred to in the *Report of the Task Force on Law, the Economy and Underemployment*)<sup>62</sup> provided much to consider when approaching PLT and the role which it could play in increasing the

---

<sup>55</sup> *Ibid* VII- IX as to the general requirement; in Wisconsin, graduates of a course which has designated credits in experiential skills based legal training are the only students fully exempted from having to pass the Bar Exam; see University of Wisconsin Law School Website, *Graduation and Bar Admission*, available at [law.wisc.edu/current/rtf/04.0.html](http://law.wisc.edu/current/rtf/04.0.html) (accessed on 25 June 2017).

<sup>56</sup> ABA Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap)* (1992) ("MacCrate Report") pp.266 -278; Roy Stuckey and Others, *Best Practices for Legal Education. A Vision and Road Map* (Clinical Legal Education Association, 2007) ("Stuckey Report") pp.8- 9.

<sup>57</sup> *Ibid.*, MacCrate Report, pp.330-334; *Ibid.*, Stuckey Report, p.209.

<sup>58</sup> *Ibid.*, pp.191-192

<sup>59</sup> Stuckey Report (n.56) p.125.

<sup>60</sup> *Ibid.*

<sup>61</sup> William M Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S Shulman, *Educating Lawyers. Preparation for the Profession of Law*. (Jossey-Bass, 2007) ("The Carnegie Report") 115.

<sup>62</sup> *Report of the Task Force on Law, the Economy and Underemployment*, (17 May 2012, Massachusetts Bar Association).

skills (and employability) of recent graduates in law. The aforementioned report opined:

“Offering law students greater practical training and marketable legal skills need not necessarily require a complete reinvention of the existing third year law school curricula at most law schools. Instead, law schools should consider increasing the focus and emphasis they place on the practical options they offer during this final — and in the opinion of some — the most critical year of legal training prior to practice. The central questions are as follows: If a student wants to gain greater practical legal experience, where can such training be found? And, if such training were scarce, what kinds of programs should be added to most benefit students?”<sup>63</sup>

Whilst the learning and assessment of doctrinal law is arguably a more straightforward activity than that of learning and assessing skills, just because one method may be easier to administer does not necessarily confer upon it the character of being either the only or best method for so doing. The value of being able to commit to memory large tracts of information and regurgitate same within a defined time period does not necessarily bespeak an intimate knowledge and understanding of how to utilise such information in a practical environment or over an extended period of time (and hence does little to enhance employability) something that has long been recognized in the medical and dental professions in the USA which have placed greater emphasis on the acquisition of practical skills by their students.<sup>64</sup>

Spurred on by these views, the rising costs of attending law school, and a belief that despite students’ increasing debt burden they were not being properly equipped for practice, the call for greater transmission of skills into the law school curriculum reached a crescendo through a series of reports commissioned by a number of major bar associations between 2012 and 2014.<sup>65</sup> ABA policy embraced

---

<sup>63</sup> *Ibid.*, p.5.

<sup>64</sup> *Ibid.*,

<sup>65</sup> Massachusetts Bar Association, *Report of the Task Force on Law, the Economy and Underemployment. Beginning the Conversation* (May 17 2012) 1- 9, available at <http://www.massbar.org/conversation> (accessed on 30 July 2017); Illinois State Bar Association. *Final Report, Findings and Recommendations on the Impact of Law School Debt on the Delivery of Legal Services* (June 22 2013) [45], available at [www.isba.org/.../Law%20School%20Debt%20Report%20-%203-8-13.p...](http://www.isba.org/.../Law%20School%20Debt%20Report%20-%203-8-13.p...) (accessed on 30 July 2017); The State Bar of California, *Task Force for Admission Regulation Reform: Phase 1 Final Report* (June 24 2013) 1-17 (“The California Report”), available at [www.calbar.ca.gov](http://www.calbar.ca.gov) > About Us (accessed on 30 July 2017); American Bar Association Task Force on the Future of Legal Education, *Draft Report and Recommendations. Task Force on the Future of Legal Education* (September 20 2013), available at [www.americanbar.org/.../aba/.../draft\\_report\\_of\\_aba\\_task\\_force\\_septem...](http://www.americanbar.org/.../aba/.../draft_report_of_aba_task_force_septem...); American Bar Association Task Force on

a degree of mandatory PLT style training (if not quite a mandatory stand-alone program) in August 2014.<sup>66</sup> A major part of these changes are contained in Standard 303(3)(a) of the ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017 (“the ABA standards”) which require Law Schools from the fall of 2016 to provide an experiential learning requirement in professional skills amounting to six credit hours to students who will graduate in Spring 2016.<sup>67</sup> Six credit hours roughly comprises about one tenth of the face to face type requirements for successful completion of a law school course.<sup>68</sup> This professional skills learning stipulation is part of a wider statement in Standard 302 that knowledge, skills and values are the bedrock of the law school curriculum.<sup>69</sup> On a broader level, Standard 302 also requires law schools to create “learning outcomes” that will include “competency” in a number of areas including professional conduct and professional skills.<sup>70</sup> The menu of particular skills which must be taught is left open but there is broad range of suggested options in an interpretation section of Standard 302.<sup>71</sup> Although there are no specific prescriptions stipulated to establish how sufficient competences are to be met through these learning outcomes, Standard 315 establishes a process which promotes flexibility of delivery and content, yet assists in providing useful and valid measurements to ensure that these outcomes are met. It does so by making it incumbent on the Deans of law schools to monitor the degree of achievement of learning outcomes through means such as surveying the various branches of the profession and involvement of them in assessment and taking any necessary remedial measures to correct any deficiencies.<sup>72</sup> With the right goodwill, this reform will hopefully bring about fruitful partnerships between the profession and

---

the Future of Legal Education, *Report and Recommendations. American Bar Association Task Force on the Future of Legal Education* (January 24 2014), available at [www.americanbar.org](http://www.americanbar.org) › ... ›Center for Professional Responsibility›all of the five proceeding reports (accessed on 27 June 2017).

<sup>66</sup> American Bar Association, *American Bar Association Standards and Rules of Procedure for Approval of Law Schools 2016-2017* Chapter 3, available at [https://www.americanbar.org/.../aba/.../Standards/2016\\_2017\\_aba\\_standards\\_and\\_rul...](https://www.americanbar.org/.../aba/.../Standards/2016_2017_aba_standards_and_rul...), (accessed on 19 August 2017).

<sup>67</sup> *Ibid.*,

<sup>68</sup> *Ibid.*, *Standard 311(a)*.

<sup>69</sup> Anthony Niedwiecki, “Law Schools and Learning Outcomes: Developing A Coherent, Cohesive, And Comprehensive Law School Curriculum” (2015) 64 *Cleveland State Law Review* 661, 673.

<sup>70</sup> American Bar Association Standards and Rules of Procedure for Approval of Law Schools 2016-2017 (n.66) *Standards 302(b) and (d)* respectively.

<sup>71</sup> *Ibid.*, Interpretation 302-1 states, “*For the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.*”

<sup>72</sup> *Ibid.*, *Standard 315. Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods and Interpretation 315-1.*

law schools so that they can engage in a more collaborative role to better inform and shape education and training.

Standard 314, which orders the application of formative and summative assessment to the whole curriculum in a way that “provides meaningful feedback”, should help foster a greater depth of learning amongst students in these areas.<sup>73</sup> Pursuant to Standard 303(3)(c), an experiential course must be a simulation course, a law clinic, or a field placement. The field placement, as defined in Standard 304(a) represents an internship type requirement, but it is very different from the largely unregulated educational experience that the SRA envisages as sufficient vocational preparation for practice. It contains a number of very robust mechanisms to better guarantee a comprehensive and quality educational experience that would address the deficiencies that have been raised concerning work experience as the totality of vocational training.<sup>74</sup> These include supervision and feedback of the student by a faculty member or a site supervisor, liaison between them and a classroom component to allow for self-reflection by the student.<sup>75</sup> Realistically, it appears unlikely that many practising lawyers would have time to engage as mentors in a way that would meet these requirement. As such, this alternative may only be able to satisfy a niche market.

Matters such as diversity are recognized as important in the ABA standards.<sup>76</sup> There is no suggestion, let alone a mandate, though, to achieve these goals through adjustment to models of delivery of legal education and training. Rather, these goals could be achieved through more traditional methods of assistance to disadvantaged groups such as affirmative action admissions procedures and financial and academic support.<sup>77</sup>

These changes occur in conjunction to another recent reform in the USA whereby students have to pass a ninety minute drafting type test called the MultiState Performance Test (“MPT”) which is part of a new type of bar exam, the Uniform Bar Exam (“UBE”) that has been progressively introduced into twenty eight jurisdictions. The purpose of the drafting test is to improve students’ practical

---

<sup>73</sup> *Ibid.*, Standard 314. *Assessment of Student Learning*.

<sup>74</sup> Roy Stuckey, “Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses” (2007) 13 *Clinical Law Review* 807, 835.

<sup>75</sup> American Bar Association, *American Bar Association Standards and Rules of Procedure for Approval of Law Schools 2016-2017* (n.66) Standard 304(c).

<sup>76</sup> *Ibid.*, Standard 206.

<sup>77</sup> *Ibid.*, Standard 206 Interpretation 206-2.

writing skills.<sup>78</sup> Perusal of previous MPT exams shows that these are limited to more straightforward types of tasks such as writing memoranda of advice or letters of advice to clients,<sup>79</sup> meaning that achieving alignment between teaching and assessment should be less difficult than in perhaps other more complex tasks e.g. drafting pleadings or affidavits. In addition, as it does not seek to test oral skills such as advocacy, it does not present the potentially insurmountable logistical difficulties arising from the need to simultaneously employ large numbers of multiple assessors. Some misgivings have been expressed about the uniformity of marking of the UBE across different jurisdictions, but not evidently concerning the MPT component.<sup>80</sup>

Interestingly, a form of legal apprenticeship called a law office programme is available in some states, such as Virginia, as a form of training in lieu of the degree requirement, or as an adjunct to some law study. Those engaged now in law office programmes are relatively miniscule, comprising only 60 out of 83,986 students who took the Bar exam nationally in 2014. Also, while these programmes are attractive from a financial standpoint (as participants are not saddled with the large student debts of those undertaking the normal route) there are perceived disadvantages that are probably reflective of the unpopularity of this avenue.<sup>81</sup> For instance in Virginia, pass rates for ‘apprentices’ for the bar exam were close to 50% less than the overall pass rate between February 2000 to July 2013 and it can be difficult finding supervisors (which is a pre-condition for entry) and many of mentors find it difficult to devote sufficient time to these duties.<sup>82</sup> This perceived lack of proper supervision and training tends to reflect the earlier criticisms of legal apprenticeships in the USA, a system which prevailed in that country prior to the start of the twentieth century and led to the rise of law school education.<sup>83</sup>

---

<sup>78</sup> National Conference of Bar Examiners, *Jurisdictions That Have Adopted the UBE*, available at [www.ncbex.org/exams/mpt](http://www.ncbex.org/exams/mpt), (accessed 27 June 2017).

<sup>79</sup> National Conference of Bar Examiners, *Preparing for the MPT*, available at [www.ncbex.org/exams/mpt/preparing/](http://www.ncbex.org/exams/mpt/preparing/) (accessed 28 June 2017).

<sup>80</sup> Suzanne Darrow-Kleinhaus, *A Reply to the National Conference of Bar Examiners: More Talk, No Answers, So Keep on Shopping* (30 March 2017) p.24, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2943516](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2943516), (accessed 28 June 2017).

<sup>81</sup> Sean Patrick Farrell, “The Lawyer’s Apprentice. How to Learn the Law Without Law School” *New York Times* July 30 2014, pp. 1-2, available at <https://www.nytimes.com/2014/08/03/.../how-to-learn-the-law-without-law-school.html> (accessed on 26 June 2017).

<sup>82</sup> Virginia Board of Law Examiners, *Law Reader Memorandum, A Memorandum on the Concept of Reading Law under an Attorney's Supervision* (September 2014), available at [barexam.virginia.gov/reader/readermemo.html](http://barexam.virginia.gov/reader/readermemo.html) (accessed on 26 June 2017).

<sup>83</sup> Stephen Alton, “Roll Over Langdell, Tell Llewellyn the News, A Brief History of American Legal Education”, (Summer 2010) *Oklahoma City University Law Review* Volume 35, No. 10 339, 342-344.

## II. DISRUPTIONS TO LEGAL PRACTICE

Much has already been said and written<sup>84</sup> about concepts of disruption, digital or otherwise, and the probable/possible effects that this will have upon legal practice in the Twenty-first Century.<sup>85</sup> It is not the purpose of this article to fully define the nature and extent of what “disruption” may amount to in the future of legal practice. What is clear is that legal practice, throughout the world in general, is facing special challenges such as the availability of technology which transforms the way in which legal tasks are carried out, disruptions to lawyers’ monopolies by non-traditional law models and the globalization of legal services.<sup>86</sup> In particular, these trends are creating competitive pressures to produce highly skilled and expert freshly minted lawyers who can generate excellent legal work at economical rates, with a minimum of mentoring and supervision.<sup>87</sup> According to a report by Deloitte, the way that legal practitioners will work will be fundamentally transformed by technology as early as 2020.<sup>88</sup>

The question now is whether adopting a model for qualifying new legal practitioners, which relies upon a form of assessment, firmly rooted in Nineteenth and Twentieth Century concepts, will adequately address (or assess) a new practitioner’s preparedness to deal with the contingencies created. The magnitude of these changes makes it apparent that these new challenges are unlikely to be adequately met by practitioners trained (and assessed) in an environment where artificial propositions are evaluated in a removable performance environment.<sup>89</sup>

As Professor Carolyn Evans observes with respect to preparing law graduates for the contingencies of legal practice in a “digitally disrupted” environment:

---

<sup>84</sup> Rebecca Lim, *The Top 7 Trends That Disrupted the Legal Industry in 2016*, (Legal Insight, Thomson Reuters, 16 January 2017), available at <http://insight.thomsonreuters.com.au/top-7-trends-disrupted-2016/> (accessed 30 July 2017).

<sup>85</sup> Professor Carolyn Evans, *Digital Disruption and the Law - Balancing Tradition with Innovation in a Fast-Changing Industry is a Challenge for legal Educators*, (University of Melbourne Website, 2017), available at <https://pursuit.unimelb.edu.au/articles/digital-disruption-and-the-law> (accessed 30 July 2017).

<sup>86</sup> Carole Silver, “What We Know and Need to Know About Lawyer Regulation” (Winter 2016) 67 *South Carolina Law Review* 461, 461-471.

<sup>87</sup> Andrew Godwin and Richard Wai-sang, “Legal Education, Practice Skills, and Pathways to Admission: A Comparative Analysis of Singapore, Hong Kong, and Australia” (2017) 66(2) *Journal of Legal Education* 212, 214-215.

<sup>88</sup> Deloitte, *Developing Legal Talent. Stepping into the Future Law Firm*, (February 2016) pp.2-8, available at [www.legalfutures.co.uk/wp-content/uploads/developing-legal-talent-2016.pdf](http://www.legalfutures.co.uk/wp-content/uploads/developing-legal-talent-2016.pdf) (accessed 17 July 2017).

<sup>89</sup> D R Sadler, “Formative Assessment and the Design of Instructional Systems” (1989) 18(2), *Instructional Science*, 142.

“Students must understand the questions they are researching; have a deep familiarity with the best research tools for the particular task; understand the hierarchies at play in terms of court structures and forms of law; and have good judgment about which sources to use and when. None of these skills is straightforward and *all of them require a serious educational effort both in law school and in professional training.*” [emphasis added]

Many universities in the USA have addressed this problem by creating centres offering practical, task-based training to their students to help foster related IT skills in these areas. An examination of the structure and content of the programs ‘on offer’ at each of these institutions quickly reveals that formative, rather than summative, methodologies for training and assessment are the norm and that the students undertaking studies in these innovative environments are not assessed on their performance (and development of skills and knowledge) in an examination format.<sup>90</sup> What is being taught here are not simply skills and abilities which are easily assessed. There are values that need to be obtained and the type of training being undertaken is not easily evaluated as either ‘correct’ or ‘incorrect’.

### III. CURRENT SITUATION CONCERNING LEGAL TRAINING IN HONG KONG

In Hong Kong, those seeking admission as either solicitors or barristers are required to undertake the Post Graduate Certificate in Laws Course PCLL after completion of a law degree and before completion of a training contract and pupillage respectively.<sup>91</sup> The PCLL provides training in PLT in a simulated learning environment.<sup>92</sup> This provision for substantial skills based learning in the PCLL has occurred as a result of a recommendation in the Roper Redmond Report that this be done.<sup>93</sup>

---

<sup>90</sup> For example, see Columbia Law School Website, *Lawyering in the Digital Age Clinic*, available at [www.law.columbia.edu/clinics/lawyering-in-the-digital-age-clinic](http://www.law.columbia.edu/clinics/lawyering-in-the-digital-age-clinic) (accessed 19 August 2017); Duke University School of Law Website, *Law Tech Lab*, available at <https://law.duke.edu/tags/duke-law-tech-lab/> (accessed 19 August 2017); Georgetown Law Website, *The Program in Legal Technologies*, available at <https://www.law.georgetown.edu/academics/centers-institutes/legal.../legal-technologie...> (accessed 19 August 2017).

<sup>91</sup> Wilson W S Chow and Firew Tiba, “Professional Legal Education Reviews: Too Many What’s, Too Few ‘How’s” (2013) *European Journal of Law and Technology* Vol 4, No 1.

<sup>92</sup> *Ibid.*, pp. 3-7.

<sup>93</sup> Jack Burke, “An Impediment to Accord or a Springboard for Change? The Proposal to Introduce a Common Qualifying Exam in Hong Kong” (2015) *Asia Pacific Law Review* Volume 23 Number 1 123, 133-134.

There has been debate in Hong Kong since 2012 about the direction that practical legal training in the jurisdiction should take.<sup>94</sup> Two main concerns have been voiced at various stages about the existing model. Firstly, potential entrants and the Law Society have both argued that there are insufficient places available in the PCLL.<sup>95</sup> Secondly, the Law Society of Hong Kong (“the Law Society”) has queried whether the assessments offered by the PCLL providers “lacked consistency”.<sup>96</sup> Although it commissioned a consultation paper into whether a CEE should be introduced in Hong Kong as long ago as December 2013,<sup>97</sup> it has yet to release this report. Nevertheless, it announced on 6 January 2016 that the CEE will be introduced in 2021 after completion of the PCLL.<sup>98</sup> It identified (but did not expand upon) three main reasons in this press release as to why the CEE should be introduced:

- (i) Safeguarding the standards of those who will become solicitors.
- (ii) Providing access to capable entrants.
- (iii) Acting consistently with its duty as a regulator to preserve the profession’s standards as well as to look after the interest of the public.<sup>99</sup>

At the time of writing this paper, there is still no detail which has formally been released by the Law Society as to the details of the CEE, such as the subjects which would be assessed and the mode and manner of these assessments, and who would be entrusted with setting and marking of these exams.

However, in early 2016, the President of the Law Society is reported to have made various suggestions about the nature of the CEE and the Law Society’s role in it.

---

<sup>94</sup> The Law Society of Hong Kong, *Pres Releases, Response to the Statements by HKBA and the University of Hong Kong on Common Entrance Exam (“CEE”)* (11 January 2016) para 11, available at [www.hklawsoc.org/](http://www.hklawsoc.org/) (accessed 7 June 2017).

<sup>95</sup> Respectively, *The Panel on Administration of Justice and Legal Services. Report of the Panel on Administration of Justice and Legal Services for Submission to the Legislative Council. LC Paper No. CB(4)1162/14-15* (June 24 2015) para 21, available at <http://www.legco.gov.hk/yr14-2017/15/.../panels/.../reports/ajls20150624cb4-1162> and *A 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 the Administration of Justice and Legal Services*, the Legislative Council (“LegCo”) for the meeting scheduled for Monday, December 16 2013 at 4.30 pm in Conference Room 2 of the LegCo, 9 December 2013, paragraph 15, available at <http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1216cb4-234-1-e.pdf> (accessed 7 June 2017).

<sup>96</sup> Legislative Council Secretariat (n 3) para.7.

<sup>97</sup> Law Society of Hong Kong, *Consultation on the Feasibility of Implementing a Common Entrance Examination in Hong Kong*, previously available at <http://www.hklawsoc.org.hk>.

<sup>98</sup> The Law Society of Hong Kong, *Pres Releases, Common Entrance Exam* 6 January 2016 paras 3-4, available at <http://www.hklawsoc.org/> (accessed 7 June 2017).

<sup>99</sup> *Ibid.*, para 5.

These ranged from a statement that the main purpose of the CEE would be to set common exams for all PCLL graduates (on the basis that they would not need to pass any assessments by their PCLL providers)<sup>100</sup> to a more minimalist version whereby the Law Society would set a question on PCLL exams.<sup>101</sup> If the former model is adopted, it is likely to create a pedagogical disconnect between the PCLL and CEE. As to the latter approach, the notion of the Law Society having specific input into university exams is potentially inconsistent with the notion of university independence.<sup>102</sup> Also, the exam setting process might become somewhat cumbersome as the Law Society's representatives would presumably have 'one hat' as the external academic adviser for other questions set by the PCLL providers, and another when setting their question. As the Law Society is still working on the final detail of the CEE, this may not be the final pronouncement on this issue.<sup>103</sup> Perhaps, a more worthwhile change that would be administratively easy to implement and would remove any perception of inconsistencies in assessment standards, might be to have the PCLL providers set the same exams in courses like Professional Conduct, Civil and Conveyancing (where there should not be any significant differences in the curricula of the three PCLL Providers).<sup>104</sup>

On a broader level, the Law Society's definitive announcement that there will be a CEE predates a wide ranging enquiry by the Standing Committee on Legal Education in Hong Kong on legal education and training, including the PCLL, and thus has attracted criticism that it is premature in its findings.<sup>105</sup> What seems clear then is that a more detailed analysis is required as to the underlying pedagogy supporting any change to the PCLL (which may well be a *fait accompli* as the Law

---

<sup>100</sup> The Bar Association of Hong Kong, *Statement of the Hong Kong Bar Association on the Law Society's Decision to Implement a Common Entrance Examination for Qualifying Entries into the Solicitors' Profession* (8 January 2016) paragraph 1, available at [www.hkba.org](http://www.hkba.org) (accessed 8 June 2017).

<sup>101</sup> Hong Kong Bar Association, *Further Submission to the SCLE on the Decision of the Law Society to hold the CEE* (12 February 2016), para 4, available at [www.hkba.org](http://www.hkba.org) (accessed 8 June 2017).

<sup>102</sup> *Ibid.*, para 5.

<sup>103</sup> Legislative Council Secretariat (n.3) para 7.

<sup>104</sup> Submission of the Faculty of Law, The University of Hong Kong, *Panel on Administration of Justice and Legal Services of the Legislative Council LC Paper No. CB(4)884/15-16(03)* (25 April 2016) paras 2.9 and Appendix C, available at [www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160425cb4-884-3-e.pdf](http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160425cb4-884-3-e.pdf), (accessed on 17 July 2017).

<sup>105</sup> The Bar Association of Hong Kong, *Statement of the Hong Kong Bar Association on the Law Society's Decision to Implement a Common Entrance Examination for Qualifying Entries into the Solicitors' Profession* paras 5 and 6 available at [www.hkba.org/](http://www.hkba.org/) (accessed on 15 November 2017).

Society is statutorily empowered to promulgate such a requirement)<sup>106</sup> to ensure that it meets the aspirations set out in its press release in 2016.

#### **IV. Moving Forward for Hong Kong's Stakeholders in the PCLL**

Hong Kong's legal industry has been in special position to grow and prosper for a number of years now as a result of its access to legal work on the mainland.<sup>107</sup> This development is only likely to continue to grow following Hong Kong's potentially major roles in a number of transformative economic initiatives. Firstly, Hong Kong is set to occupy a key role, partially by virtue of its fortunate geographical position, in the "One Belt, One Road" initiative, that seeks to create major infrastructure projects throughout Asia, Europe and Africa, with the chances of resultant legal work in the areas of financing, mergers and acquisitions, and mediation and arbitration.<sup>108</sup> Secondly, the Hong Kong will have a pivotal part in the Guangdong-Hong Kong-Macau Greater Bay Area Plan which aims to bring about greater cooperation in the economic development of these regions with an attendant surge in financing related work.<sup>109</sup> Thirdly, Hong Kong is poised to strengthen its position as a major financial centre with the establishment in Hong Kong of the Bond Connect Scheme which will afford an entrée into the Mainland's interbank bond market.<sup>110</sup>

That being said, legal practice, and hence legal education, throughout the world in general is facing special challenges such as the availability of technology which transforms the way in which legal tasks are carried out, disruptions to lawyers' monopolies by non-traditional law models and the globalization of legal services.<sup>111</sup> In particular, these trends are creating competitive pressures to produce highly

---

<sup>106</sup> See sections 4 and 73 Legal Practitioners Ordinance (Cap.159) and 7(a) Trainee Solicitors Rules (Cap.159J).

<sup>107</sup> Luke Marsh and Michael Ramsden, "Developments in Hong Kong Legal Education" (2015) 3(2) *Asia Journal of Legal Education* 144, 159.

<sup>108</sup> Rimsky Yuen, Keynote Speech, *Opportunities and Challenges for Lawyers under the Mainland's "Belt and Road Initiative"* ALB Hong Kong In-House Legal Summit 2015 (22 September 2015), available at [www.doj.gov.hk/eng/public/pdf/2015/sj20150922e.pdf](http://www.doj.gov.hk/eng/public/pdf/2015/sj20150922e.pdf), (accessed on 2 July 2017).

<sup>109</sup> Li Qiayi and Yang Shen, "HK Explores Integration Plan", *Global Times* 20 April 2017, available at [www.pressreader.com/usa/global-times-us-edition/20170420/281487866226537](http://www.pressreader.com/usa/global-times-us-edition/20170420/281487866226537), (accessed on 2 July 2017).

<sup>110</sup> Karen Yeung, "Bond Market Opens Up" *South China Morning Post* A6 (1 July 2017).

<sup>111</sup> Carole Silver, "What We Know and Need to Know About Lawyer Regulation" (Winter 2016) 67 *South Carolina Law Review* 461, 461-471.

skilled and expert freshly minted lawyers who can generate excellent legal work at economical rates, with a minimum of mentoring and supervision.<sup>112</sup>

The Hong Kong Bar Association, cognizant of disruptive competition to its share of the market from globalized legal entities, is expanding its reach into direct access work. Hong Kong barristers are now permitted to compete with solicitors for direct access to certain types of advisory work from Mainland law firms and a pilot plan is running in which these barristers can work as legal consultants to Shanghai firms. Plans are also in place to explore further paradigm changes to the way barristers can work, extending as far as allowing them to engage as consultants to local firms.<sup>113</sup> The Bar Association is also taking steps to more actively promote awareness among those who can currently provide direct instructions to barristers such as corporate counsel, accountants, foreign lawyers, accountants and engineers.<sup>114</sup> A persuasive case can be made then that both arms of the profession's ability to work effectively with PCLL providers to inculcate the sophisticated attitudes and legal skills necessary to prosper in today's dynamically changing legal environment will help safeguard its future profitability and success.<sup>115</sup>

Those involved in delivering and regulating the PCLL have a historical opportunity to collaborate in identifying the changes that need to be made to it, so that it is able to best meet the rapidly changing demands of modern practice. One way of achieving this goal is to identify the necessary competencies which lawyers entering practice must have. However, this should not be the end of the fact finding exercise, but rather should act as one stage in continuum that will identify the types of training and assessment (both formative and summative measures) that will produce the types of lawyers who will succeed financially and act ethically. A number of US law schools have added subjects that teach innovative areas of practice that will be central to law firm's success over the next five to ten years. Some examples of these are e-discovery, improvement of processes, automation of

---

<sup>112</sup> Andrew Godwin and Richard Wai-sang, "Legal Education, Practice Skills, and Pathways to Admission: A Comparative Analysis of Singapore, Hong Kong, and Australia" (2017) 66(2) *Journal of Legal Education* 212, 214-215.

<sup>113</sup> Winnie Tam SC, *Speech of the Chairman of the Hong Kong Bar Association, Winnie Tam SC, at the Opening of the Legal Year*, (11 January 2016), available at [www.hkba.org/.../20160111%20-%20OLY%20Jan%202016%20Speech%20%28Eng...](http://www.hkba.org/.../20160111%20-%20OLY%20Jan%202016%20Speech%20%28Eng...), (accessed 6 July 2017).

<sup>114</sup> Winnie Tam, SC, *Chairman's Report for 2016* (10 January 2017) paras 26-27, available at [www.hkba.org/](http://www.hkba.org/), (accessed 6 July 2017).

<sup>115</sup> James E Moliterno, "The Trouble with Lawyer Regulation" (2013) 62 *Emory Law Journal* 102, 113.

documentation and legal project management.<sup>116</sup> A major part of the dialogue between the profession and PCLL providers should be not simply what these new competencies are, but how can they best be embedded into the curriculum to most effectively foster learning. There is therefore no time to lose in equipping vocational students with these and other necessary skills.

### **Lessons for PLT in Other Common law Countries**

The lessons and experiences derived from the USA about the need for PLT can be seen to be such fundamental pedagogical ones that they are applicable to common law countries worldwide. Rather than adopting the forthcoming changes to the training (or not) of solicitors in England Wales, there is no time to lose in equipping students with all necessary and up to date skills.

---

<sup>116</sup> American Bar Association. *Commission on the Future of Legal Services, Report on the Future of the Legal Services in the United States* (2016) p.25, available at <https://www.americanbar.org/...commissions/commission-on-the-future-of-legal-servi...> (accessed 17 July 2017).