

ONLINE LEGAL EDUCATION IN HONG KONG

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1. INTRODUCTION

This article provides an overview of undergraduate, postgraduate, qualifying (that is, the Postgraduate Certificate in Laws, PCLL) and continuing legal education, and the relationship between legal education and the legal profession in Hong Kong. Within these categories, it considers the current progress of Hong Kong towards online legal education and the use of information technology in legal education and within the legal sector, with a particular focus on the effects of the COVID-19 pandemic.¹

This article observes that the development of Hong Kong online legal education had remained largely stagnant in the pre-pandemic times. During the pandemic, the resort to online legal education in law schools seems to take the approach of 'emergency remote teaching',² with a tendency to revert to face-to-face methods of course delivery and assessment whenever permitted under the pandemic restrictions. On the other hand, continuing legal education has successfully moved towards hybrid or fully online modes of delivery and may sustain in the future. It is argued that the Hong Kong legal education community, and more generally, the Hong Kong higher education sector, should take bold steps towards adopting well-designed and effective online pedagogies and assessment practices. As the legal profession and the judiciary in Hong Kong gradually improve their capacities and capabilities to utilise information technology and online tools, the legal education offered in the region must not shy away from responsibilities to equip aspiring legal professionals with technological skills in preparation for their future legal practice.

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¹ Despite the situation of the pandemic in Hong Kong is relatively moderate by global standards, with a cumulative total of around 13,800 cases (out of the population of around 7.5 million) as of the date of this article (31 January 2022), Hong Kong has been imposing one of the strictest isolation and quarantine measures around the world. For higher education in Hong Kong, suspensions for face-to-face classes and changes to assessments have been in place from time to time over the past two years. The most recent suspension occurs from 24 January 2022 onwards, due to a recent resurgence of confirmed cases.

² This term refers to the 'emergency' change of face-to-face delivery modes to online remote learning, and is to be contrasted with online learning that have been well-planned and well-designed in advance of the course. The term is coined in Charles Hodges and others, 'The Difference Between Emergency Remote Teaching and Online Learning' (*Educause Review*, 27 March 2020) <<https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning>>. See further Section 3 below.

2. BACKGROUND

Hong Kong is a common law jurisdiction with its legal system and laws derived historically from the English common law as a former British colony. Following the English legal system, there are two distinct branches of legal professions: solicitors and barristers. According to the Basic Law, these laws previously in force in Hong Kong are preserved and maintained (unless they contravene the Basic Law) since the handover of Hong Kong to the People's Republic of China of 1997, and the legislature may amend these laws.³ Other laws in force in Hong Kong include new laws enacted by the legislature, and a number of national laws listed in Annex III of the Basic Law.⁴ The Hong Kong courts are vested with independent judiciary power, free from any interference, and have jurisdiction to adjudicate cases (except over acts of state such as defence and foreign affairs), including the power of final adjudication, and 'may refer to precedents of other common law jurisdictions'.⁵ In practice, the Hong Kong courts have very frequently and consistently considered developments in other common law jurisdictions and have developed its own local jurisprudence. Therefore, legal education in Hong Kong not only involves teaching the current state of domestic law, but also requires providing multiple perspectives from other common law jurisdictions. Of course, the increasingly intertwining relationships and intensifying interactions between Hong Kong and mainland China in terms of political, economic, social, and cultural aspects mean that Hong Kong law students must also be equipped with a sufficient working knowledge of the civil law and the legal system and laws of mainland China. Legal education in Hong Kong is therefore never an easy task.

There are two main participating stakeholders in entering the legal profession in Hong Kong: the law schools and the legal professions (solicitors and barristers). The availability of places to enter the legal profession is not so much driven by the demand of the needs of the profession or the number of students willing to enter the profession, but rather by the capacity and funding of law schools and universities. Therefore, as far as undergraduate and qualifying legal education is concerned, the extent and degree of online legal education adopted in a respective law school is dependent on willingness of the institution and its faculty members. On the other hand, continuing legal education has transitioned relatively smoothly into hybrid or fully online modes. It is likely to be more convenient for participants of continuing legal education to participate online, which is a strong factor in favour of such transition. The developments of (online) continuing legal education is explored in Section 3.2.

There are many ways to qualify for legal practice in Hong Kong, and this article does not intend to set them out exhaustively. The predominant route is to be admitted and to read a Bachelor of Laws (LLB) degree programme in Hong Kong, and then to be admitted and to read the Postgraduate Certificate of Laws (PCLL) programme, which is only offered in Hong Kong. Both

³ Basic Law, Art 8.

⁴ Basic Law, Art 18.

⁵ Basic Law, Arts 19, 84, 85.

of these programmes are offered by the three law schools in Hong Kong: the University of Hong Kong, the Chinese University of Hong Kong, and the City University of Hong Kong.

In Hong Kong, the PCLL programme is generally considered to be the 'gatekeeper' of the legal profession in Hong Kong. This is because the PCLL programmes have relatively strict admission requirements and low admission rates (at around 55%). Moreover, unlike LLB programmes, there is no guarantee that one can pass the PCLL programme, with a noticeably high failure rate (at around 25%) at first attempt. These are explained in Section 2.2.

2.1 Entering the Hong Kong law schools

All three universities offer their respective Bachelor of Laws (LLB) programmes. An LLB programme covers all the required subjects for admission to the PCLL, as well as a number of electives where students can study specific legal areas that are of interest to them. In addition to a four-year full-time programme leading to a single award of the LLB degree, there are also a variety of joint-degree and dual-degree programmes, which allows for obtaining two degrees in usually four to five years.⁶

All three universities also offer a full-time two-year Juris Doctor (JD) programme, with the Chinese University of Hong Kong also offering a part-time option in 3.5 years. The JD programme only admits students that already have a bachelor's degree in a non-law discipline, or a bachelor's degree in law from a non-common law jurisdiction. As such, despite its name, a JD programme is not a doctorate and is instead placed at Level 6 (Master level) of the Hong Kong Qualifications Framework.⁷ A JD programme also covers all the required subjects for admission to the PCLL, but students can only choose a very limited number of additional electives due to its intensive scheduling.

The three law schools also offer various programmes of Master of Laws (LLM). Each law school provides around six to eight specialisms or streams within their respective LLM programme. Currently, the award of any LLM degrees (whether Hong Kong or overseas) do not qualify for PCLL admission or legal practice in Hong Kong.

⁶ Joint degrees that are offered in conjunction with the LLB degree include Bachelor of Business Administration (Law), Bachelor of Social Sciences (Government and Laws), Bachelor of Arts, Bachelor of Science (for the University of Hong Kong), Bachelor of Arts (Translation), Bachelor of Social Science (Sociology) (for the Chinese University of Hong Kong), Bachelor of Business Administration in Accountancy, Bachelor of Science in Computing Mathematics, Bachelor of Social Sciences in Criminology, and Bachelor of Social Sciences in Public Policy (for the City University of Hong Kong). Dual degrees that are offered in conjunction with the LLB degree (in the University of Hong Kong) include LLB degree in University College London, LLB degree in Peking University, JD degree in the University of British Columbia, and various LLM degrees.

⁷ The Chinese translation of 'Juris Doctor' is also inconsistent among the three law schools. The University of Hong Kong adopted the term '法律碩士' (literally 'law master's degree'), while the other two law schools adopted the term '法律博士' (literally 'law doctorate').

A word on the funding of law schools. All three law schools in Hong Kong operate as a faculty (Faculty of Law or School of Law) within a university which, as with most other higher education institutions in Hong Kong, are funded and subsidised by the government.⁸ However, in Hong Kong, each government-funded higher education institution is an autonomous body established under statute with its own Governing Council.⁹ Therefore, the University Grants Committee (UGC) is established to ensure that these public higher education institutions are 'providing the highest possible standards of education in the most cost-effective manner'.¹⁰ The UGC has no statutory or executive powers, but it is tasked with the important mission to allocate funding by the government to its funded institutions, and to offer impartial and respected expert advice to the Government on the strategic development and resource requirements of higher education in Hong Kong. According to the latest 2021/22 budget, an estimated amount of HK\$23.0415 billion is granted to the UGC.¹¹ The UGC promotes the understanding and mediates the interests among higher education, the Government, and the community at large. It also carries out research assessment exercises (through the Research Grants Council, RGC) and ensures quality assurance and enhancement (through the Quality Assurance Council, QAC). Local students enrolled in government-funded degree programmes (including LLB degrees) in UGC-funded universities have to pay a prevailing rate (currently at HK\$42,100 per annum), while non-local students pay a fee at around 3 to 4 times of that rate (currently at around HK\$140,000 to HK\$171,000 per annum). Those enrolled in joint-degree and dual-degree programmes described above may have to self-finance the additional years of study or credits taken (currently at around HK\$85,000 per annum). JD programmes are self-financed and all students (local or non-local) currently pay around HK\$200,000 to HK\$230,400 per annum. Most LLM programmes are also self-financed and all students (local or non-local) currently pay around HK\$141,120 to HK\$171,000 per annum.¹² Funding is therefore generally not a problem for universities and law schools, and Hong Kong law schools are generally able to attract a considerable amount of students from mainland China as well as international students to attend.

⁸ There are also a number of self-funded institutions in Hong Kong, which are irrelevant for the purposes of this article except those mentioned below.

⁹ The relevant statutory instruments for the three universities with law schools are University of Hong Kong Ordinance (Cap 1053), The Chinese University of Hong Kong Ordinance (Cap 1109), and City University of Hong Kong Ordinance (Cap 1132).

¹⁰ 'Roles and Functions' (*University Grants Committee*)

<<https://www.ugc.edu.hk/eng/ugc/about/overview/roles.html>>.

¹¹ 'The 2021–22 Budget: Head 190 – University Grants Committee' (*budget.gov.hk*)

<<https://www.budget.gov.hk/2021/eng/pdf/head190.pdf>>.

¹² Under a UGC pilot scheme commencing from September 2020, selected local students may pursue designated taught postgraduate programmes in UGC-funded universities at the prevailing rate of local students for UGC-funded undergraduate programmes (currently at HK\$42,100 per annum). The scheme currently includes four LLM programmes. See 'Targeted Taught Postgraduate Programmes Fellowships Scheme' (*University Grants Committee*)

<https://www.ugc.edu.hk/eng/ugc/activity/targeted_postgraduate_scheme.html>.

Some other local universities and higher education institutions also offer law courses, especially those that offer degrees in the fields of business administration, but none of those offer programmes which qualifies a student for admission to the PCLL programme. There are three exceptions. First, students may undertake preparatory courses in various self-funded higher education institutions and take the University of London LLB examinations administered by the Hong Kong Examinations and Assessment Authority. Upon graduating from the University of London LLB programme, students take Conversion Exams (see Section 2.2 below) in four subjects (three top-up subjects and commercial law Paper C) before being eligible to apply for the PCLL. Second, the Graduate Diploma in English and Hong Kong Law (Common Professional Examination) offered by the HKU School of Professional and Continuing Education (HKU SPACE) and Manchester Metropolitan University, which, through a certain progression route, gives students the eligibility to apply directly for the PCLL. Third and most recently, the Advanced Diploma for Legal Executives (Graduate Level) offered by HKU SPACE builds on an Legal Executive course approved by the Law Society and gives students (with three years of law-related employment) the eligibility to apply directly for the PCLL. The first batch of students commenced their studies under this route in November 2021.

2.2 Entering the Postgraduate Certificate of Laws programme

The Postgraduate Certificate of Laws (PCLL), a one-year full-time programme, is the prerequisite to enter any branch of the Hong Kong legal profession. It is offered by all three law schools, with the University of Hong Kong also offering a two-year part-time option. It is an intensive programme designed to equip students with the practical skills relevant to their legal practice, including courses on, among other things, corporate and commercial transactions, civil and criminal litigation (drafting and advocacy), and professional practice and ethics. The Standing Committee on Legal Education and Training (SCLET) is established under section 74A of the Legal Practitioners Ordinance (Cap 159), and part of its functions is to keep under review, evaluate, assess and make recommendations to the system and provision of legal education and training in Hong Kong, as well as the academic requirements and standards for admission to the PCLL programme.¹³

Again, there are many ways to be eligible for admission to the PCLL. The most common route is to graduate from an LLB or JD programme in the three local law schools. Overseas students may also be admitted to the PCLL but they must first 'demonstrate competence' in 12 subjects, including nine 'Core Subjects' (contract, tort, constitutional law, criminal law, land law, equity, evidence, business associations, commercial law) and three 'Top-Up Subjects' Hong Kong constitutional law, Hong Kong land law and Hong Kong legal system.¹⁴ For those who did not

¹³ Legal Practitioners Ordinance (Cap 159), section 74A(2).

¹⁴ There are 14 subjects (instead of 12) before 2021. However, in light of the recommendations of the SCLET Final Report released on 15 August 2018, the three law schools have moved two procedural subjects, namely civil procedure and criminal procedure, into the PCLL programme. These two subjects are no longer pre-

meet these requirements, for example, because they study an overseas LLB degree, they can take and pass the Hong Kong Conversion Examinations for PCLL admission, which is offered twice a year in January and June by the Hong Kong Conversion Examination Board. These Conversion Examinations are offered in six subjects, namely, commercial law, evidence, business associations, Hong Kong constitutional law, Hong Kong land law and Hong Kong legal system. The other six subjects must be completed as part of the student's main law qualification. Due to the intensity in preparing for these Conversion Examinations, most overseas students who intend to enter the Hong Kong legal profession will take these exams in stages, some during the first year of their law degree, in order to be eligible for PCLL admission on time. A student can attempt a failed subject again in a later examination session.

Admission to the PCLL programme has proven to be competitive for many years. Among these places, some are government-funded while others are self-funded. The self-funded students have to pay a tuition fee of around 4.5 to 5.5 times of those who have managed to secure government-funded places (HK\$42,100 versus around HK\$184,500 to HK\$230,400). Generally speaking, the overriding criterion in determining admission and funding is academic merit, although there are consistently opinions as to the fairness in comparing among single-degree and joint-degree programmes, between LLB graduates and JD graduates, between local graduates and overseas graduates, between fresh graduates and mature graduates with legal-related work experience, and so on.

Table 1 shows the statistics of the number of applications, offers and admittances to the PCLL programme in the three Hong Kong law schools for the 2020/21 academic year, based on the most recent SCLET Annual Report in 2020. The admission rate is around 55% (812 out of 1474) and the successful rate for government-funded places is estimated at around 15% (out of all applications) or around 27% (out of all offers):¹⁵

Table 1 – Number of applications, offers and admittances to the PCLL programme for the 2020/21 academic year

Law School	Applications	Offers	Admittances	
			Government-funded	Self-funded
Faculty of Law, University of Hong Kong	667	293 (full-time, FT) 93 (part-time, PT)	117 (FT) 0 (PT)*	176 (FT) 93 (PT)

requisites for entry to the PCLL programme. See SCLET, 'Comprehensive Review of Legal Education and Training in Hong Kong: Final Report of the Consultants' (SCLET, April 2018)

<<https://www.sclet.gov.hk/eng/pdf/final2018.pdf>>.

¹⁵ SCLET, 'Annual Report 2020' (SCLET) <<https://www.sclet.gov.hk/eng/pdf/2020e.pdf>>. The successful rate for government-funded places has to be estimated due to the lack of publicly available statistics from the Faculty of Law of the Chinese University of Hong Kong.

Faculty of Law, The Chinese University of Hong Kong	324	173	(statistics not provided)	(statistics not provided)
School of Law, City University of Hong Kong	483	253	53	168

* Only full-time students are eligible to be considered for government-funded places.

The PCLL programme is also known to have a relatively high failure rate, particularly at first attempt (around 25%). Although the eventual number of failures are low, there are implications in failing the PCLL programme at first attempt. Most trainee solicitor contracts in Hong Kong contain a 'first attempt' clause, where students failing the PCLL programme at first attempt will have their trainee contract automatically withdrawn. These students will then have to negotiate with the solicitors' firm to resolve the issue. There is considerable inconvenience to students due to the short time gap between the release of supplementary examination results and the commencement of the training contract or pupillage. Students also face immense pressure in attempting supplementary examinations. Table 2 shows the number of failures of the PCLL programme for the 2019/2020 academic year:¹⁶

Table 2 – Number of failures of the PCLL programme for the 2019/20 academic year

Law School	Proportion or number of students who failed to graduate at first attempt and were required to take supplementary examinations	Proportion or number of students who failed to graduate after supplementary examinations
Faculty of Law, University of Hong Kong	23.9% (FT) 27.8% (PT Year 1) 16.9% (PT Year 2)	4.0% (FT) 7.2% (PT Year 1) 1.0% (PT Year 2)
Faculty of Law, The Chinese University of Hong Kong	(statistics not provided)	0
School of Law, City University of Hong Kong	64 out of around 212 students (around 30.2%)	5 (in which 4 failed to graduate from the PCLL at all, and 1 who graduated in 2021)

From the statistics above, it can be seen that the PCLL programme is relatively difficult to be admitted, financed, and passed, making it the major 'gatekeeper' of access to the legal profession in Hong Kong. However, most PCLL graduates are likely to find a job with an employment rate estimated between 80% and 90%.¹⁷ This near parity of PCLL graduates to

¹⁶ *ibid.*

¹⁷ SCLET Final Report (n 14), p 81.

training places is, in SCLET's view, unhealthy because smaller training providers will be fishing from a restricted pool of applicants and the Bar will also receive some weaker candidates who are unable to obtain training contracts, but eventually falling by the wayside due to insufficient available work.¹⁸ An increase in PCLL numbers is therefore generally favourable from competition and access perspectives. Importantly, the SCLET noted that 'restricting access to the PCLL may have unintended (negative) access and diversity consequences. Moreover, it is also not the function of a legal training (or legal services) regulator to create or control the market for lawyers.'¹⁹ However, the 'bottleneck' will then be switched to the training contract/pupillage stage. From the US and UK experience, this will mean the PCLL providers will no longer be accused of an unfair admissions policy but instead of greed in taking fees from PCLL students for whom there are no jobs. One must therefore choose the lesser of two evils, and Hong Kong (unlike many other jurisdictions) took a different path.

2.3 Entering the legal profession

As stated above, Hong Kong maintains the divide between solicitors and barristers. Different qualifying routes and regulatory authorities apply for these two professions. As of the date of this article (31 January 2022), there are around 10,800 practising solicitors and around 1,600 barristers in private practice. There are also around 1,100 trainee solicitors and around 85 pupil barristers. It is very rare for problems relating to entering the profession to occur during the period of trainee solicitor contract or pupillage or during the admission process.

2.3.1 Solicitors

The Court of First Instance may admit a 'fit and proper person' to be enrolled on the roll of solicitors,²⁰ and the requirements for admission (and application for a practising certificate) are prescribed by the Council of the Law Society.²¹ A trainee solicitor must complete a two-year trainee solicitor contract with a solicitor who is qualified to employ trainee solicitors.²² In normal circumstances, a trainee solicitor shall apply for a certificate of eligibility for admission within 12 months after the completion of his most recent trainee solicitor contract,²³ and then proceed to apply for admission.

¹⁸ *ibid*, p 81, footnote 10.

¹⁹ *ibid*, p 82.

²⁰ Legal Practitioners Ordinance (Cap 159), s 4.

²¹ Admission and Registration Rules (Cap 159B), s 3 (admission); Cap 159, s 6 (practising certificate).

²² Cap 159, s 20.

²³ Cap 159B, s 3(3).

2.3.2 Barristers

The Court of First Instance may admit a 'fit and proper person' to be enrolled on the roll of barristers,²⁴ and the requirements for admission (and application for a practising certificate) are prescribed by the Council of the Bar Association of Hong Kong (the Bar Council).²⁵ A person is qualified for admission as a barrister if s/he (1) has obtained a PCLL, (2) has been admitted as a solicitor in Hong Kong for at least three years, or (3) is an overseas lawyer practising for at least three years with a currently valid practising certificate and has passed (or has been exempted from) the Barristers Qualification Examination.²⁶ Then, s/he must apply for a certificate of eligibility for pupillage, and, in normal circumstances, must complete not less than 6 months of 'approved pupillage'.²⁷ After then, he can apply for a certificate of qualification for admission,²⁸ and obtain a limited practising certificate, and subsequently, a full practising certificate.²⁹

2.4 The use of information technology

Hong Kong is in an advanced position in terms of technology, although perhaps less so in terms of emergent and innovative technologies. There is widespread application of information technology (IT) in the daily lives of Hong Kong citizens. According to the Network Readiness Index published by the Portulans Institute, Hong Kong is ranked first out of 130 economies in terms of international internet bandwidth, and received very high scores in terms of internet access in households and schools.³⁰

2.4.1 Information technology in law schools

Generally speaking, IT resources are not a problem in the Hong Kong (higher) education sector. All universities are equipped with, to various extent, IT hardware (including computers) and software (including internet access). They are also of good quality and affordable to the great majority of university teachers and students, although some students from a more disadvantaged socio-economic background might be less advantaged in terms of IT access. However, financial aid are in place to assist these students.

²⁴ Cap 159, s 27. For the criteria of 'fit and proper person', see *Re Youh Alan Chuen Po* [2013] 2 HKLRD 485; *Re A* [2018] 2 HKLRD 1245, [2018] HKCA 272.

²⁵ Barristers (Qualification for Admission and Pupillage) Rules (Cap 159AC), section 8 (admission); Cap 159, section 30 (practising certificate).

²⁶ Cap 159AC, s 4(1). The Barristers Qualification Examination is held once a year which consists of five examination papers covering a wide range of subjects.

²⁷ Cap 159AC, ss 11–14.

²⁸ Cap 159AC, s 8.

²⁹ Cap 159, s 31(2) (limited practising certificate); Cap 159, s 30 (full practising certificate).

³⁰ 'Hong Kong (China)' (*Network Readiness Index*) <<https://networkreadinessindex.org/country/hong-kong-china/>>.

2.4.2 Information technology in the legal profession

Again, the use of IT is very common in the Hong Kong legal profession. Access to both good-quality and affordable hardware and software is very easy among legal professionals. Most lawyers work on a daily basis with computers and a variety of IT tools. However, the legal profession have faced some challenges with the COVID-19 pandemic, where most employees are working from home, and, like many other parts of the world, require the use of video conferencing tools and other online working platforms. In response to these demands, the Government announced a HK\$40 million LawTech Fund in April 2020, giving up to HK\$50,000 for each law firm or barristers' chambers with five or less practising lawyers for procuring or upgrading their IT systems. As of July 2020, around 400 applications were received.³¹

2.4.3 Information technology in the Judiciary and the courts

The court processes in Hong Kong had, until the COVID-19 pandemic, remained heavily reliant on paper documents and in-person hearings. This is a rare outlier among almost all jurisdictions in the Asia-Pacific region or even globally.³² According to the World Bank's *Doing Business 2020* survey, Hong Kong scored 1 out of 4 in 'court automation', falling behind of many jurisdictions such as Singapore and South Korea (4 out of 4).³³ There is an urgent need to speed up reforms in information technology infrastructure.³⁴ As such, the Judiciary had formulated a two-stage Information Technology Strategy Plan (ITSP) and had obtained government funding of HK\$684.2 million in May 2013. Its aims include, among other things, to provide effective and efficient services in the administration of justice, and to facilitate active case management in improving access to justice.³⁵ One of the major outcomes of ITSP include an integrated case management system (iCMS) to support the litigation processes of courts and tribunals by enabling appropriate data sharing, data driven workflow and

³¹ 'Further Extension of Application Period for LawTech Fund' (*Department of Justice*, 24 July 2020) <https://www.doj.gov.hk/en/community_engagement/press/20200724_pr1.html>.

³² See further Germaine Lau, 'Electronic Filing and Proceedings in Courts' (*Legislative Council*, 28 May 2020) <<https://www.legco.gov.hk/research-publications/english/essentials-1920ise07-electronic-filing-and-proceedings-in-courts.htm>>.

³³ World Bank, 'Doing Business 2020: Hong Kong SAR, China' (*World Bank*) <<https://openknowledge.worldbank.org/bitstream/handle/10986/32974/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies-Economy-Profile-of-Hong-Kong-SAR-China.pdf>>, 54. At that time, the initial complaint cannot be filed electronically through a dedicated platform, it is not possible to carry out service of process electronically, or to pay court fees electronically.

³⁴ To implement a system of e-litigation the second among a total of six challenges of the Hong Kong judiciary suggested by Professor Anselmo Reyes in 2014, after stepping down as a Court of First Instance judge: Anselmo Reyes, 'The Future of the Judiciary: Reflections on Present Challenges to the Administration of Justice in Hong Kong' (2014) 44(2) *Hong Kong Law Journal* 429, 436–437.

³⁵ See 'Legislative Council Brief: Subsidiary Legislation Relating to the Information Technology Strategy Plan' (*Legislative Council*, 2 June 2021) <https://www.legco.gov.hk/yr20-21/english/brief/aw275005010009_20210602-e.pdf>.

supporting the use of electronic documents. However, the implementation of both stages of the ITSP was substantially delayed and even resulted in an Audit Commission review in 2019.³⁶

The COVID-19 pandemic has served as an effective catalyst for the Judiciary to actively explore new ways to modernise its court processes and allow access to court services. During the first onset of the pandemic, the court had adopted a conservative approach and adjourned all court proceedings (except urgent and essential hearings) from 29 January to 3 May 2020 (known as the General Adjournment Period, GAP). To deal with the effect on the caseload caused by GAP, the Chief Justice has issued a statement on 25 March 2020 stating that the Judiciary is 'actively considering expanding the scope of hearings (beyond just urgent or essential matters) by hearing submissions by telephone, by video-conferencing or similar means of visual aid and generally making use of technology'. Subsequently, the Judiciary issued on 2 April 2020 a Guidance Note for Remote Hearings for Civil Business in the High Court, and appropriate hearings are conducted using video-conferencing facilities (VCF) and telephone gradually since then.³⁷ Subsequent suspension and resumption arrangements of court business due to new 'waves' of confirmed cases in Hong Kong have then seen substantial improvements. According to the latest Phase III of the Remote Hearings for Civil Business in the Civil Courts which commenced on 2 January 2021, remote hearings can be conducted in the Court of Appeal and the Court of First Instance of the High Court, the Competition Tribunal, the District Court, the Family Court, the Labour Tribunal, and the Small Claims Tribunal.³⁸ The use of a 'browser-based' VCF option is also introduced to provide a low-cost option for court users to connect to the court for VCF hearings.

Before 2021, the Electronic Transactions Ordinance (Cap 553), which provided recognition for electronic records and signatures with the same effect as their written counterparts, is not applicable in the proceedings of almost all courts and tribunals.³⁹ This has created a significant gap between legal practice and the current IT trends. With the long-awaited passage of the Court Proceedings (Electronic Technology) Ordinance (Cap 638) on 17 July 2020 and its operation since 1 October 2021, Hong Kong finally completes an important step of the ITSP, catches up with other jurisdictions in the electronic handling of court-related documents, and also demonstrates its commitment to environmental concerns by reducing the use of paper. The key features of the new Ordinance include the following: (1) electronic filing or sending of documents to the court will generally be allowed; (2) documents between parties may be served electronically if there is mutual consent to serve and accept documents by electronic

³⁶ Audit Commission, 'Judiciary Administrator's Work in Implementing Projects under the Information Technology Strategy Plan' (*Audit Commission*, 28 October 2019) <https://www.aud.gov.hk/pdf_e/e73ch06.pdf>.

³⁷ *Cyberworks Audio Video Technology Ltd (in compulsory liq) v Mei Ah (HK) Co Ltd* [2020] 2 HKC 133, [2020] HKCFI 347 (Coleman J) ruled that telephone hearings are possible under the Hong Kong legal framework.

³⁸ 'Guidance Note for Remote Hearings for Civil Business in the Civil Courts (Phase 3 : Wider Video-Conferencing Facilities and Telephone)' (Judiciary, 15 December 2020) <https://www.judiciary.hk/en/court_services_facilities/guidance_note_for_remote_hearings_phase3.html>.

³⁹ Electronic Transactions Ordinance (Cap 553), s 13.

means; (3) signatures other than traditional manual signatures, such as digital signatures and electronic signatures, for court-related documents will generally be allowed; and (4) proper legal status is provided for printouts/copies of printouts for documents issued by the court.⁴⁰

3. MOVING TOWARDS ONLINE LEGAL EDUCATION

Online legal education is not a new idea and has been subject to voluminous research. As reflective teachers, the challenge is to think creatively about how online teaching and learning tools can be employed to promote students' understanding of disciplinary knowledge.⁴¹ In fact, the current technological solutions available in Hong Kong are already capable of providing high-quality and effective online legal education. However, rather than taking the lead to reform, the higher education sector has remained slow and unresponsive. Pre-pandemic efforts to utilise online and multimedia tools for legal education are rare and scattered, with only a few enthusiastic legal educators attempting to change the largely stagnant Hong Kong legal education community. Even in the wake of the pandemic, it seems that the higher education sector is by and large resistant to changes towards a more sustainable and resilient system of teaching and learning.⁴²

The situation of Hong Kong online legal education, and higher education more generally, is a clear reflection of the approach which is coined as 'emergency remote teaching',⁴³ drawing a contrast from carefully planned and designed online education. Due to the unprecedented speed in which institutions and instructors are forced to move their teaching and learning online, there was a lack of preparation without comprehensive consideration of the appropriate methods of course delivery, online assessment, and student support. In fact, online legal education is not simply to transfer and perpetuate (ineffective) approaches in face-to-face classrooms into online classrooms. Rather, it requires untangling the complexities of its design and decision-making processes. To start with, there are four fundamental dimensions to online learning: context, design, implementation and outcomes.⁴⁴ Nine further dimensions are identified in terms of online instruction design, each of which has numerous options: modality, pacing, student-instructor ratio, pedagogy, instructor role online, student role online, online communication synchrony, role of online assessments, and source of feedback.⁴⁵ Online education also involves investing in infrastructure and other supporting resources, which inevitably takes time to identify and build.

⁴⁰ 'Subsidiary legislation related to Information Technology Strategy Plan gazetted' (*info.gov.hk*, 4 June 2021) <<https://www.info.gov.hk/gia/general/202106/04/P2021060400316.htm>>.

⁴¹ Paul Ashwin and others, *Reflective Teaching in Higher Education* (Bloomsbury 2020) 247.

⁴² Wilson Lui and Adrian Lam, *The Critical Engagement of Higher Education with Future Crises* (2021) 5(2) Dewey Studies (forthcoming).

⁴³ Hodges (n 2).

⁴⁴ Barbara Means and others, *Learning Online: What Research Tells Us about Whether, When and How* (Routledge 2014) 8–14.

⁴⁵ *ibid* 27.

3.1 Legal Education

In the pre-pandemic times, legal education has largely been conducted face-to-face. In the LLB programmes, these usually involve lectures or seminars which involve many (sometimes more than 300) students in a lecture hall or room, and tutorials which are smaller in class size (around 15 students per class). The general approach of instructors in lectures or seminars is to select and deliver the teaching content unilaterally to students, with relatively limited input and feedback from students. There might be a more interactive element in tutorials but usually tutors (who may often be practitioners teaching on a part-time basis) still plays a predominant role in reinforcing legal concepts and cases to students. There have been some successful attempts to adopt online tools and multimedia products in law classrooms, although these only occupy a very minor proportion of the overall legal education experience provided to students in Hong Kong. Some of these examples include: (1) the Optional Exploration activity and the LEAD initiative which involves the production of multimedia outputs to facilitate learning and teaching,⁴⁶ (2) the in-class optional niche (ICON), a collaborative learning and assessment activity with student-teacher partnership where students and teachers co-create materials and co-own the learning and teaching process,⁴⁷ and (3) flipped classrooms, which involve short videos on key concepts of legal principles before a completely student-led group discussion to analyse a news article during class time.⁴⁸ Some legal educators have quoted multiple advantages of online legal education, including convenience and efficiency, increased participation and questions from students, and a more effective sharing and dissemination of materials.⁴⁹

The PCLL programme is also conducted face-to-face, and there have been considerable difficulties in turning the learning and teaching as well as the assessments online. During the pandemic, instructors recorded the large group sessions themselves and made them available online, while small group sessions are delivered synchronously via video conferencing tools. Exams are conducted online with a lockdown browser and a remote proctoring system. Despite the relatively smooth operation, there is clearly reluctance in maintaining the online delivery and assessment methods, as shown by the resumption of face-to-face classes and examinations once the situation of the pandemic is slightly alleviated. For instance, the PCLL exams in December 2021 to January 2022 are held in-person, in response to a relatively stable pandemic situation during that period, while subsequent exams (at least those in February 2022) are held online due to the recent resurgence of confirmed cases.

⁴⁶ 'CoLLab at HKU Law' (*CoLLab*) <<https://sites.google.com/view/wecollab/home>>.

⁴⁷ Alice Lee and Phoebe Woo, 'Enlivening the Law Classroom: Let Students Speak, not Just Sit' (2021) 5(2) *International Journal for Students as Partners* 183.

⁴⁸ 'Tort Law Lecture "Flipped" into an Engaging Discussion' (*University of Hong Kong Teaching & Learning*, 26 October 2015) <<https://tl.hku.hk/2015/10/tort-law-lecture-flipped-into-an-engaging-discussion/>>.

⁴⁹ Walter Woon, 'Why Online University Classes Herald a Better Way Forward, not a temporary Fix' (*todayonline.com*, 27 January 2022) <<https://www.todayonline.com/commentary/why-online-university-classes-herald-better-way-forward-not-temporary-fix-1799926>>.

One might have to ponder about what is in the PCLL programme that makes it impossible to be delivered or assessed online. In fact, as recognised in the SCLET Final Report, the option of developing an online stream of the PCLL programme to extend access to the profession is considered to be possible 'within the existing structure': it 'does not create the same level of demand on physical plant, and has cost and access advantages in enabling students to earn while they learn', citing examples of online learning in professional legal education in Australia and New Zealand.⁵⁰ It is hesitant to make such a recommendation only because 'substantial upfront resourcing and development' is required. But this article suggests that it is high time to consider the worthiness in investing for an online option for qualifying legal education, and what are the difficulties (if there are actually any) in implementing online legal education in Hong Kong (including both undergraduate and qualifying legal education), given that they have been delivered quite successfully in many other jurisdictions.

3.2 Continuous Legal Education

Continuous legal education has played an important role to ensure that legal practitioners are up to date with the latest developments in law and practice that has relevance to their work. The two strands of the Hong Kong legal profession have different requirements in this regard.

All solicitors with a practising certificate in Hong Kong must accumulate 15 Continuous Professional Development (CPD) points in each CPD practice year (commencing on 1 November and ending on 31 October the following year), and trainee solicitors must accumulate 30 CPD points by the end of their two-year period of employment as a trainee solicitor.⁵¹ One CPD point is accredited for one hour of participation in the activity. Breaches of the CPD requirement are regarded as professional misconduct and solicitors may be subject to imposition of a fine, censure, suspension or striking off of solicitors, and cancellation or suspension of a trainee solicitor contract.⁵² Although there are a wide range of activities that can count towards CPD requirements, most Hong Kong legal practitioners will attend courses, lectures, and talks for that purpose. The Law Society organises legal training courses and seminars for practitioners (and the public) which are eligible for CPD points under the auspices of the Hong Kong Academy of Law, but it is also very common for practitioners to attend courses organised by other institutions in Hong Kong (including the government, universities, and external providers) where accreditation is sought for CPD points from the Law Society.⁵³

⁵⁰ SCLET Final Report (n 14), p 82.

⁵¹ Continuing Professional Development Rules (Cap 159W), s 5(1).

⁵² 'Failure to Comply with the CPD Requirement' (*The Law Society of Hong Kong*)

<<https://www.hklawsoc.org.hk/en/Support-Members/Professional-Support/Continuing-Professional-Development-Scheme/CPD-Information-Package/Failure-to-Comply-with-the-CPD-Requirement>>.

⁵³ See eg 'Continuing Legal Education' (*Faculty of Law, The University of Hong Kong*)

<<https://www.law.hku.hk/knowledge-exchange-and-impact/continuing-legal-education/>>.

Due to the COVID-19 pandemic, most CPD events are no longer offered face-to-face but rather online. These include live webinars delivered synchronously, or less frequently, pre-recorded courses. According to the Guidelines of the Law Society, there must be evidence showing that these events are, among other things, “real time” and interactive; the interactive elements include but are not limited to question-and-answer session(s), group work, quizzes, and exercises. ‘A course which only requires a participant to click through a series of slides will not qualify for CPD points. Reading and reviewing cases or articles does not qualify for CPD points.’⁵⁴ Most fully online or hybrid CPD events therefore involve filling in feedback forms or answering short questions, and the attendance of the participants is closely monitored. Another method to obtain CPD points and has relevance with online legal education is to undertake certain approved distance learning courses in Hong Kong or higher overseas educational institutions.⁵⁵ They have to attend the classes and provides evidence by a certificate of attendance or confirmation letter issued by the relevant institution.

Barristers are not subject to an annual mandatory CPD requirement currently, although this is likely to change in the very near future (see below). Pupil barristers are required to attend a programme of compulsory continuing legal education known as the Advanced Legal Education Programme (ALE), the majority of which are organised under the auspices of the Hong Kong Advocacy Training Council. They have to attend courses to obtain a minimum of 14 ALE points during the one-year pupillage, which cover areas of advocacy, drafting, professional conduct and ethics. Pupil barristers failing to attend so will not be able to enter into full practice at the end of their approved pupillage.⁵⁶ In light of the pandemic, most talks traditionally held in the Jurors Assembly Room in the High Court have moved online to Zoom webinars. However, according to information online, advocacy programmes are still delivered face-to-face (in a larger venue) except on one occasion in September 2020 (through Zoom).⁵⁷

The Bar Association introduced the Voluntary Scheme of Continuing Professional Development in July 2021, and intends to introduce a mandatory programme for continuing legal education for all practising barristers by the end of 2022, and the consultation process is in its final stages. A similar CPD point system will be adopted, and each member regardless of seniority must obtain a minimum of 8 CPD points per year. There will be no accreditation system to approve courses, but members will be required to declare how a particular activity

⁵⁴ ‘Guidelines for Compliance with CPD Requirements Issued under Sections 2 and 5(3) of the CPD Rules’ (*The Law Society of Hong Kong*) <<https://www.hklawsoc.org.hk/zh-HK/Support-Members/Professional-Support/Continuing-Professional-Development-Scheme/CPD-Information-Package/Guidelines-for-Compliance-with-CPD-requirements-issued>>.

⁵⁵ ‘Approved Distance Learning Courses’ (*The Law Society of Hong Kong*) <<https://www.hklawsoc.org.hk/en/Support-Members/Professional-Support/Continuing-Professional-Development-Scheme/CPD-Information-Package/Approved-Distance-Learning-Courses>>.

⁵⁶ Barristers (Advanced Legal Education Requirement) Rules (Cap 159AB), s 7(1).

⁵⁷ ‘Pupils’ Courses’ (*Hong Kong Advocacy Training Council*) <<https://www.hk-atc.org/course.aspx>>.

has met the CPD point requirement. The fulfilment of the CPD point requirement will be a prerequisite for the issue of a practising certificate in the following year.⁵⁸

It is observed that the conversion to online modes of delivery for most CPD events for solicitors (and in the future, for barristers) is and will continue to be welcomed. Legal practitioners can attend CPD events at the comfort of their homes or office spaces, without the need to commute to conference centres, university auditoriums or hotel ballrooms (which also incurs a substantial rental charge). The commuting time saved can be used for other tasks, be it work-related or personal. The line-up of speakers is also no longer subject to geographical boundaries, travel arrangements or visa restrictions, but perhaps only to time zone differences. With online modes of delivery, one can also effortlessly participate or speak in events organised in multiple jurisdictions, which all have immediate relevance to Hong Kong's legal practice. There are great benefits in continuing to organise continuing legal education through the use or facilitation of online and technological tools.

3.3 Difficulties with Online Legal Education and Their Solutions

3.3.1 Course Delivery

Teachers are given much discretion in designing and delivering online courses, such as fully online through live or pre-recorded lectures, or hybrid with some form face-to-face teaching. However, in either case, it is general policy across universities that lecture recordings must be made available in case students cannot or do not attend classes. It is particularly important during the pandemic that students are given the option of online attendance as some are 'trapped' in lockdown or quarantine.

To investigate the effectiveness of fully online or hybrid teaching and learning during the COVID-19 pandemic, a survey was conducted by a group of teachers and students in the University of Hong Kong Faculty of Law with the support of a Teaching Development Grant. The project also hopes to identify the way forward for higher education in the post-pandemic era. According to the online survey, even if teaching venues remain open for students to attend during the hybrid teaching period, most students have chosen not to attend classes in person for various reasons, including saving commuting time or peer influence.⁵⁹ However, many students have also indicated that the campus facilities are not up to standard, or teachers are not sufficiently familiar with their functionalities to conduct classes in hybrid mode. In other cases, there are acoustic or other technical problems (such as unreliable WiFi

⁵⁸ Hong Kong Bar Association, 'Proposal for Mandatory Programme of Continuing Legal Education' (Circular No 136/21, 31 August 2021).

⁵⁹ Similar results are also obtained from other legal educators. In a company law seminar group at the National University of Singapore, 94% of the respondents found it (very much) more convenient to have Zoom classes: Woon (n 49).

connections, noises or other distractions) preventing teachers and students who join Zoom in the same classroom to have meaningful communication or discussion. It might be a frustrating experience for those giving and receiving instruction. As a solution, these students may be invited to come and participate in the in-person class (if the course is offered in hybrid mode) or participate online from a designated room in the Faculty building.

The same survey also reveals that most students are of the view that lectures can be delivered online, but tutorials and skills-based sessions, such as those on advocacy and client interviewing, should be conducted in person, for better interaction and discussion. Students are keen to practice advocacy and client interviewing skills in a 'real', in-person setting, such as in (moot) courtrooms or offices. It also trains students to listen, understand and respond to the other parties of the conversation, such as the judge or the client. However, in view of the technological developments of the Hong Kong judiciary outlined in Section 2.4.3, it is also foreseeable that these might have to be conducted 'virtually' over the phone or VCF facilities, and students will very likely come across both formats in practice. As envisaged by Sir Julian Flaux, Chancellor of the UK High Court, 'as long as the pandemic remains, judges will be sensitive to medical and safety concerns and it may continue to be the case that some trials are heard remotely'.⁶⁰ Moreover, 'provided that we have up to date and robust technology, hybrid hearings may well prove to be a frequent form of hearing in the future with judge and advocates and critical witnesses in court but others such as clients or members of the media participating remotely'.⁶¹ Effective skills to conduct advocacy and client interviews online may therefore be valuable in future legal practice. In order to learn the profession well, must also consider equipping students with the capability to deliver legal services online.⁶²

The survey also reflects a few other constructive suggestions. Students are almost unanimous in terms of requesting lectures to be recorded in the future, even after the pandemic, as it will help with their revision. Training workshops can also be held for teachers and teaching assistants to improve their IT literacy for better planning and delivery of online and hybrid classes. In terms of supporting infrastructure, law schools and other higher education institutions should consider setting up facilities to support online course delivery. The University of Hong Kong Faculty of Law has created a studio in the Faculty building and employed supporting staff to provide a dedicated space for multimedia production. It can be used to produce not only 'standard' videos that deliver course content, but also other multimedia materials that facilitate learning, such as advocacy demonstrations, career workshops, as well as more general promotional materials for the law school and its faculty members, staff, researchers, and students alike.

⁶⁰ Julian Flaux, 'Update on the Chancery Division' (*Courts and Tribunals Judiciary*, 14 January 2022)

<<https://www.judiciary.uk/wp-content/uploads/2022/01/Chancery-Bar-2022.pdf>> para 13.

⁶¹ *ibid*, para 14.

⁶² See also Daniel Susskind and Richard Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press 2022).

3.3.2 Assessment

While the transition to online teaching through the help of virtual learning environments (such as Moodle) and video conferencing tools (such as Zoom) could be and was done relatively smoothly, to administer online exams are much more problematic. The main concerns relate to the academic integrity of the exams, as well as the issues of cheating, collusion, and plagiarism. Studies have showed that online remote proctoring are able to mitigate cheating.⁶³ As described in Section 3.1, PCLL exams are conducted online with a lockdown browser and a remote proctoring system. While there might be various potential risks and disadvantages to certain groups of candidates, remote proctoring arrangements are able to ensure the security and integrity of the assessments. Adequate arrangements should be in place for students requiring reasonable adjustments, and for those who are 'digitally disadvantaged' and are unable to access remote teaching and assessment.

The same reluctance in online assessments is also seen in exams for overseas students who wish to join the Hong Kong legal profession. For example, the PCLL Conversion Exams are still held in Hong Kong where candidates must attend in person. Due to COVID-19, some students were concerned that they would be unable to do because of travel restrictions and quarantine requirements. However, followed a failed discussion, none of these Conversion Exams have been held online.⁶⁴ This shows a stark contrast with admission exams in other jurisdictions, such as the New York Bar Exam, with three sittings held remotely in October 2020, February 2021 and July 2021.⁶⁵ In the UK, the Solicitors Regulation Authority have authorised that assessments of the Legal Practice Course (LPC) (the UK equivalent of PCLL) can be conducted online with remote proctoring even after the COVID-19 pandemic.⁶⁶ Remote proctoring systems enables candidates to take an examination online from their home computer, supervised remotely by the assessment provider, using the computer's audio, video, keyboard and other systems to check the candidate's identity at the start of the exam, to lock-down other internet access, to prohibit cut and paste into the exam window, to scan the room to check that only the candidate is present, and can track eye movements and key strokes to pick up suspicious behaviour or cheating.⁶⁷ The Bar Standards Board (BSB) has also taken a welcoming approach towards online assessments by committing to deliver the new pupillage

⁶³ Seife Dendir and R Stockton Maxwell, 'Cheating in Online Courses: Evidence from Online Proctoring' (2020) 2 Computers in Human Behavior Reports 100033.

⁶⁴ The Standing Committee on Legal Education and Training, 'Annual Report 2020: 1 January 2020 to 31 December 2020', available online: <<https://www.doj.gov.hk/en/legco/pdf/ajls20210831e1.pdf>>.

⁶⁵ See 'NYS Bar Exam Reports and Press Releases' (*New York State Board of Law Examiners*) <<https://www.nybarexam.org/press/press.htm>>.

⁶⁶ Karen Minns, 'Remote Proctoring of Legal Practice Course (LPC) Assessments' (*Solicitors Regulation Authority*, 27 April 2021) <<https://www.sra.org.uk/globalassets/documents/sra/board-meetings/2021/sra-board-item---lpc-proctoring.pdf?version=49b0f9>>.

⁶⁷ *ibid*, para 10.

stage examination in Professional Ethics online from April 2022 onwards,⁶⁸ despite it was under immense pressure after candidates experienced considerable difficulties with the booking system and the remote proctoring system in the centralised exams that have turned online in August 2020 and had led to an independent review concluded in March 2021.⁶⁹

At a general level, it is argued that online modes of assessments should be used more frequently for any law courses. With the widespread use of computers and IT in legal practice in Hong Kong, there is now clearly a misalignment between university written examinations and actual legal practice, when computers are now adopted by students and legal practitioners alike on a daily basis.⁷⁰ To expect students to handwrite essay examinations when almost all their other work is mediated by computers is 'anachronistic'.⁷¹ Despite all these, there is general reluctance in Hong Kong to hold exams online. For example, some PCLL examinations still insist on students handwriting their draft pleadings and other court documents and closely following the formatting of standard templates. There is an imminent need to consider a change in practice.

For the methods and weightings of assessment, the University of Hong Kong have suggested in February 2020 that 'if a course taught this semester relies heavily on a proctored final exam, it would be a good idea, where possible, to reduce the weighting for that component and boost the weighting for other assessed tasks'.⁷² However, there are no apparent changes to the assessment methods in the great majority of law courses. If one browses through the course catalogues of Hong Kong law schools, one will realise in no time that there is so far very little progress in revolutionising the available forms of assessment for law courses in Hong Kong. In fact, such resistance to change occurs at a more general level for legal education,⁷³ due to the perpetuation of the doctrinal and case-based legal educational model

⁶⁸ 'The Introduction of a Professional Ethics Assessment during Pupillage' (*Bar Standards Board*, 26 November 2021) <<https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/pupillage-component/intro-of-professional-ethics-assessment.html>>.

⁶⁹ Rebecca Huxley-Binns and Sarabajaya Kumar, 'Independent Review of the Bar Standard Board's Management of the August Sittings of the Centralised Examinations' (*Bar Standards Board*, March 2021) <<https://www.barstandardsboard.org.uk/uploads/assets/d83a9e81-fd5f-4bdb-8b72396b0152185c/Final-report-of-the-independent-review-of-the-BSB-2020-exams.pdf>>. See also the press release and Action Plan subsequently published by the BSB in response to the Review: <<https://www.barstandardsboard.org.uk/resources/press-releases/bsb-publishes-independent-review-of-the-august-2020-bptc-exams.html>>.

⁷⁰ See also Alex Steel and others, 'Use of E-exams in High Stakes Law School Examinations: Students and Staff Reactions' (2018) 29(1) *Legal Education Review* 1.

⁷¹ Nora Moge and Andrew Fluck, 'Factors Influencing Student Preference when Comparing Handwritten and Typing for Essay Style Examinations' (2015) 46(4) *British Journal of Educational Technology* 793, 793.

⁷² Ian Holliday, 'From Vice-President (Teaching and Learning) on Online Learning Q&As' (*The University of Hong Kong*, 19 February 2020) <<https://covid19.hku.hk/announcements/all/teaching/general/2020/02/4750/>>.

⁷³ Sara K Rankin, 'Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools' (2011) 10(1) *Seattle Journal for Social Justice* 11.

over the generations.⁷⁴ To date, most compulsory law courses (particularly the twelve subjects that are required for PCLL admission) are conventionally assessed by in-hall examinations, and most law electives are conventionally assessed by way of one final research essay or take-home examination, or a combination of that with shorter essays and (less frequently) in-class presentations or class participation. Designing assessment methods and providing feedback is a vast topic in higher education,⁷⁵ with a considerable number of proponents of 'assessment for learning' with students playing an active role in constructing their learning.⁷⁶ This article simply indicates that there is also a critical need to re-consider assessment designs and practices in legal education.

Since the outbreak of the pandemic, many higher education institutions, including the three law schools in Hong Kong, have provided for the following options to students for several semesters in the 2019–20 and 2020–21 academic year:⁷⁷ (1) continue with letter grading for the entire course (contributing to Grade Point Average, GPA), (2) change to pass/fail grading for the entire course (not contributing to GPA), or (3) opt out of the course entirely through an option to 'late drop'. Very few students exercise the 'late drop' option for law courses as the curricula of law degrees in Hong Kong are quite packed and most of the law courses are compulsory courses for the PCLL or pre-requisites for more advanced law courses. However, many students who hope to take the pass/fail grading option in these compulsory courses for the PCLL is concerned with its impact on PCLL admissions, which is the 'gatekeeper' of the legal profession in Hong Kong with a fierce competition for admission based on the academic results of the law degree (see Section 2.2 above). No precise guidance has been given on this despite the pandemic's continuous influence, but it is obvious that the PCLL admissions panels of the respective law schools will have insufficient information to assess whether the applicant possesses the required academic ability if s/he opts for pass/fail grading in many law courses. But how many is 'many' and are pass/fail grades used as tie-breakers in marginal cases is unknown, and students are left at their own risk in opting for pass/fail grading.

To the best knowledge of the authors, despite the pass/fail option, all examination scripts in Hong Kong law schools are marked for a letter grade as usual. In this regard, there are no observable changes to the grading curves of Hong Kong law courses, even though there is experimental data (conducted among Turkey higher educators) suggesting that instructors might give out higher grades to compensate for the unforeseen negative circumstances

⁷⁴ Rick Glofcheski, 'Rethinking Teaching, Learning and Assessment in the Twenty-first Century Law Curriculum' in Christopher Gane and Robin Hui Huang (eds), *Legal Education in the Global Context* (Routledge 2016).

⁷⁵ See eg Teresa McConlogue, *Assessment and Feedback in Higher Education: A Guide for Teachers* (UCL Press 2020).

⁷⁶ See eg Kay Sambell, Liz McDowell and Catherine Montgomery, *Assessment for Learning in Higher Education* (Routledge 2013); David Carless and others (eds), *Scaling up Assessment for Learning in Higher Education* (Springer 2017).

⁷⁷ With the recent resurgence of COVID-19 confirmed cases and suspension of face-to-face classes, it is expected that the second semester of the 2021–22 academic year will follow a similar approach.

caused by the sudden switch of the course delivery mode due to COVID-19.⁷⁸ This relative stability in terms of grades and grading curves might be attributed to the previous prevalence of 'grade inflation' (giving students higher grades than they deserve) among Hong Kong law schools,⁷⁹ which resulted (in some law schools) the adoption of internal guidelines of recommended grade distributions for larger classes (for example, compulsory law courses) in the late 2010s. Instructors will have to justify grade distributions that fall outside such guidelines. This also responds to concerns about the 'inflation' in the GPA required for PCLL admissions, as well as the unfairness when comparing students across different curricula and different law schools. There are also opinions from the legal profession on the difficulty in comparing between students graduating from different law schools due to the relative leniency (or strictness) as well as the continuous 'inflation' of grades in some law schools.

3.3.3 Hardware and Software

As mentioned above, access to good-quality and affordable IT hardware and software is generally not a problem for law students and teachers in Hong Kong. However, there is the need to attend to 'digitally disadvantaged' students: some students are not in the financial position to purchase suitable IT equipment. Financial aid are in place to assist these students. Relatedly, on the issue whether students should be required to switch on their camera and microphone in classes, this is not a mandatory requirement as a matter of policy among universities, as it could be intrusive in the home environment of students. At the same time, teachers may have strong reasons to encourage students to do so. In some courses (for example, in the legal context, courses involving advocacy and client interviewing), it may be necessary for students to do so because of the nature of these tasks.⁸⁰

4. FUTURE DIRECTIONS

The Hong Kong government is currently taking a zero-tolerance approach towards COVID-19. Some are concerned that such an aggressive approach will keep the city isolated from most of the world for years to come and affect its status as an international financial and business hub.⁸¹ Unless the current policies of Hong Kong are to be changed substantially, one will expect COVID-19 to continuously impact on the lives of Hong Kong people in the near future.

⁷⁸ Engin Karadag, 'Effect of COVID-19 Pandemic on Grade Inflation in Higher Education in Turkey' (2021) 16(8) PLoS ONE e02566888.

⁷⁹ The occurrence of 'grade inflation' is referred to in an article by the University of Hong Kong Faculty of Law to the Law Society's journal: 'PCLL Admissions: Myths and Misunderstandings' (*Hong Kong Lawyer*, May 2014) <<http://www.hk-lawyer.org/content/pcll-admissions-myths-and-misunderstandings>>.

⁸⁰ Holliday (n 72).

⁸¹ 'Foreign Executives in Isolated Hong Kong Head for Exit, Sick of Zero-Covid Curbs' (*The Wall Street Journal*, 23 January 2022) <<https://www.wsj.com/articles/foreign-executives-in-isolated-hong-kong-head-for-exit-sick-of-zero-covid-curbs-11642950280>>; 'Hong Kong Covid Isolation Could Last to 2024, Euro Chamber Says' (*Bloomberg*, 26 January 2022) <<https://www.bloomberg.com/news/articles/2022-01-26/hong-kong-covid-isolation-could-last-to-2024-eu-chamber-says>>.

As such, a committed engagement in the planning, implementation, and delivery of online legal education is inescapable. This has to be done urgently but carefully, with a detailed and practicable action plan that strikes the appropriate balance between the many significant advantages and impact it will bring, and the costs and resources it will require.

The current deficient state of development of online legal education in Hong Kong stems more fundamentally from a lack of appreciation of key concepts and relevant evidence of teaching and learning in higher education. Despite the abundant resources for instructors to acquire concepts and skills in teaching and learning in higher education and to consider changes to their pedagogies, these fall outside the focus of higher education institutions in Hong Kong and around the contemporary world, which tend to become increasingly research-oriented, metric-based, and audit-driven. Higher education instructors are not encouraged sufficiently enough to become reflective practitioners and educators. The COVID-19 pandemic has further aggravated the deficiency in the current approaches towards online legal education. Continuing legal education, on the other hand, has largely adopted well with the pandemic and it is optimistic that they will maintain some online or hybrid presence after the pandemic.

One way to improve the situation immediately is to convene discussion groups and launch platforms among the institutions or across the territory to share resources and experiences of online learning, and to create a supportive environment to spark off changes. The Chinese University of Hong Kong Faculty of Law have organised biennial online conferences on teaching and learning law, most recently in June 2020,⁸² and an upcoming one in June 2022. Enthusiastic faculty members from the Faculty of Law in University of Hong Kong have also convened a teaching discussion group where they organise regular talks and seminars, and encourage informal chats for the sharing of knowledge, skills, and techniques in legal education. Above these initiatives, this article intends to summarise, for the first time, what has been done in Hong Kong to achieve online legal education and what can be done to further this goal. It is hoped that this article will serve as a reference guide for discussion, and a starting point for future initiatives in this area.

To conclude, it is now imperative for the Hong Kong legal education community, and more generally, the Hong Kong higher education sector, to move away from the idea of 'emergency remote teaching' and start to take the concepts and skills of online education seriously. If there is any progress at all, they are only toddlers' first steps. There might be many perceived challenges and difficulties to Hong Kong online legal education, particularly because of the COVID-19 pandemic, but these can all be addressed with the appropriate methods and tools. What one only needs to do now is to 'walk the talk', so that Hong Kong will be able to nurture many more legal professionals for the region, for the country, and for the world.

⁸² "Directions in Legal Education 2020" Online Conference on Teaching and Learning Law' (*The Chinese University of Hong Kong Faculty of Law*) <<https://webapp3.law.cuhk.edu.hk/conf/20200619/>>.