

# THE TESTING COLUMN

## TESTING FOREIGN-TRAINED LAWYERS: A NEW EXAM IN ENGLAND AND WALES

*by Susan M. Case, Ph.D.*

In July, I traveled to Wales to organize an item-writing effort that would create test questions for a new exam program to regulate foreign-trained solicitors who seek admission to practice in England and Wales. Two years ago, the Solicitors Regulation Authority awarded a three-year contract to a company to develop a new exam. (This company is now not allowed to provide any training programs for this exam in order to maintain a separation between the groups doing the training and the company developing the examinations.) This exam program, called the Qualified Lawyers Transfer Scheme (QLTS), came into effect on September 1, 2010.



Each component must be passed in order for the examinee to qualify as a solicitor in England and Wales. (See [www.sra.org.uk/solicitors/qlts/apply.page](http://www.sra.org.uk/solicitors/qlts/apply.page) for more details on eligibility to sit for the exam.)

### THE MULTIPLE-CHOICE TEST (MCT)

The multiple-choice test is given twice a year. Examinees must travel to sites in the United Kingdom to take the test, and they must pass this test before taking the OSCE or the TLST.

The questions on the MCT are similar in format to those on the MBE; each question includes a case vignette and assesses ability to apply knowledge to individual cases. The content is much broader than that of the MBE, as shown in the content outline below.

The exam includes three elements:

1. A full-day multiple-choice test (MCT), with questions similar in structure to those on the MBE. This must be passed first before taking the next two components, which may be taken in any order.
2. An objective structured clinical examination (OSCE), which takes place over three half days and is described below.
3. A technical legal skills test (TLST), which takes place over three half days and is also described below.

**A1** Knowledge of the jurisdiction, authority and procedures of the legal institutions and professions that initiate, develop, interpret and apply the law of England and Wales and the European Union

**A2** Knowledge of applicable constitutional law and judicial review processes

**A3** Knowledge of the rules of professional conduct, including the Solicitors' Accounts Rules

**A4** Knowledge of the regulatory and fiscal frameworks within which business, legal and financial services transactions are conducted

**A5** Understanding of Contract law

**A6** Understanding of Torts

**A7** Understanding of Criminal law

**A8** Understanding of Land law

**A9** Understanding of Equitable rights and obligations

**A10** Understanding of Human Rights

**A11** Understanding of the laws applicable to business structures and the concept of legal personality<sup>1</sup>

A formal standard-setting activity is conducted following each exam to determine the passing standard. Because the exam is new, the questions are not yet equated, although equating is expected in the future.

## THE OBJECTIVE STRUCTURED CLINICAL EXAMINATION (OSCE)

The OSCE format is used in the medical licensing examination in the United States (see [www.usmle.org](http://www.usmle.org)) but is largely unfamiliar to those in the world of law.

The exam includes three content areas:

1. Business
2. Civil and Criminal Litigation
3. Property and Probate

Each content area involves three tasks (or “stations”):

**Station 1:** Client #1 interview and completion of attendance note

**Station 2:** Client #2 interview and completion of attendance note

**Station 3:** Advocacy/oral presentation exercise

The client interviews and completion of attendance notes (Stations 1 and 2) require 60 minutes each for the following activities: 10 minutes for preparation and for reading background material,<sup>2</sup> 25 minutes for the interview, and 25 minutes to complete the attendance note. Examinees are then given a 15-minute break before the next client.

The advocacy/oral presentation exercise (Station 3) also requires an hour and includes two activities. The examinee is allowed 45 minutes to prepare and then must give a 15-minute presentation to a solicitor.

Because the OSCE format is largely unknown in bar admissions, I have included considerable detail below.

### Stations 1 and 2—Activity 1—preparation (10 minutes)

Each examinee is given an e-mail/memo which tells the examinee who the client is and something about what the client has come to discuss. There may be additional documents.

### Stations 1 and 2—Activity 2—interview (25 minutes)

Each client will enter the room, and the interview will commence. The client may bring documents to the interview. The primary objectives during the interview are to establish a good working relationship with the client and to obtain all the relevant information and as full an understanding as possible of the client’s concerns. The examinee should bring the interview to an appropriate close, noting that the examinee will be advising the client at a later date.

The examinee is not expected to provide the client with detailed advice but should answer any questions posed by the client.

**Stations 1 and 2—Activity 3—completion of attendance note (25 minutes)**

The examinee then has 25 minutes to write an attendance note on the interview, using notes made during activities 1 and 2. The attendance note should record all relevant information obtained during the interview and should identify the next steps to be taken. Any legal issues should be noted, and the examinee should provide an initial view as well as any advice for the client. Professional conduct issues should be noted, along with a note about how they should be dealt with, even if they have already been discussed in the interview.

**Station 3—Activity 1—preparation for advocacy/oral presentation (45 minutes)**

The examinee is given a case study on which to conduct a piece of advocacy/make an oral presentation. The first document is a memo asking the examinee to conduct the advocacy/make the presentation and noting before whom this will be made. Where relevant, the examinee will also be given a file of documents. This file may contain both relevant and irrelevant legal authorities.

**Station 3—Activity 2—advocacy/oral presentation (15 minutes)**

The examinee makes a presentation to a decision maker and may be asked questions.

The OSCE is graded by the assessor who has been trained to play the role of the client; the attendance note is marked by a solicitor. The oral presentation is assessed by the solicitor to whom the oral presentation is made. The passing standard is

established for each examination based on common standard-setting procedures.<sup>3</sup>

## TECHNICAL LEGAL SKILLS TEST (TLST)

The TLST covers (1) Business, (2) Civil and Criminal Litigation, and (3) Property and Probate. In each of these three areas, candidates will be required to undertake three assessed exercises: one in online legal research (60 minutes), one in legal writing (30 minutes), and one in legal drafting (45 minutes).<sup>4</sup> The tasks on the TLST are not dissimilar to those on the MPT.

### Online Legal Research

Each case for the online legal research exercise includes a problem on which a client is seeking advice. The examinee is given a computer with access to Lexis and Westlaw and has 60 minutes to complete the online legal research. Examinees are told to structure their answers in terms of advice to the client, with a second section that explains their legal reasoning and mentions any key sources or authorities.

### Legal Writing

The legal writing exercise provides 30 minutes in which to write a letter as the solicitor acting in a matter. Relevant cases and authorities may be provided, and the examinee has access to Lexis and Westlaw, but time is limited.

### Legal Drafting

The legal drafting exercise provides 45 minutes in which to draft a legal document or parts of a legal document. This may take the form of drafting from a precedent or amending a document already drafted, but it may also involve drafting without either of these. Relevant cases and authorities may be pro-

vided, and the examinee has access to Lexis and Westlaw, but time is limited.

## COSTS


These new examinations are costly. The MCT exam costs approximately \$500 in U.S. dollars, the OSCE costs approximately \$3,500, and the TLST costs approximately \$1,500. In addition, the examinees must travel to a testing center in the United Kingdom to take the test, and they typically will need housing as well.

## OVERVIEW

The QLTS involves innovative testing methods and, as a result, assesses more directly some of the skills that an entry-level lawyer will need in practice. The fact that the company was able to develop and implement these testing methods in a year's time with outstanding statistical results is remarkable.

Before we in the United States leap into adding these components to our testing arsenal, we must recognize that testing these skills directly would introduce significant additional complexities to the bar exam. Any assessment that involves face-to-face examination raises issues of comparability of cases and grading across days of test administration and across test administration sites. Because of the complexity of the examination segments, especially the OSCE, it is likely that the exam would need to be developed and administered centrally and not developed or administered in each jurisdiction.

(For example, the United States Medical Licensing Examination, which includes a similar OSCE-type exam, is developed by the National Board of Medical Examiners and administered in only five sites across the United States.) As noted above, these exam components involve significantly higher costs to the examinee. Finally, they involve a total of almost seven days of testing time.

NCBE is beginning a large study of what new lawyers do in practice. The results of this study will facilitate considerable discussion about enhancing the current bar examination in ways that may broaden the skills being tested while retaining a cost-effective perspective. 

## NOTES

1. Kaplan QLTS, MCT Multiple Choice Test, <http://www.kaplanqlts.com/pages/mct-multiple-choice-test> (last visited July 20, 2011).
2. An example of background material to be read as preparation would be an e-mail from a secretary telling about the appointment. For example, "I have made an appointment for you with a new client, Sarah Maddock. I took the call from Ms. Maddock this morning. I understand that Ms. Maddock has been charged with assault and has been bailed to appear at the Magistrates' Court next week. From our brief conversation, I don't think the client has much knowledge of criminal proceedings. I asked her to bring her charge sheet with her to the appointment."
3. Kaplan QLTS, Objective Structured Clinical Examination (OSCE), <http://www.kaplanqlts.com/page/6303914:Page:30> (last visited July 20, 2011).
4. Kaplan QLTS, Technical Skills Test (TLST), <http://www.kaplanqlts.com/pages/technical-legal-skills-test> (last visited July 20, 2011).

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