

The Legal Professional Qualification Examination and Legal Education in China

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Abstract

The establishment of China's Legal Professional Qualification Examination System has brought great influence to Chinese legal education. It has brought both opportunities and challenges for China's legal education. The Legal Professional Qualification Examination System has also caused the formation of "double school" phenomenon in China's legal education. Some training school, specialised in researching the LPQE and helping student pass the LPQE, may form the so called "double school" phenomenon. With the development of the Internet, the "double school phenomenon" has been integrated, which has promoted the reform and development of legal education in China.

Key words: The Legal Professional Qualification Examination; Legal education; "Double School" phenomenon

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1. THE ORIGIN AND DEVELOPMENT OF THE LEGAL PROFESSIONAL QUALIFICATION EXAMINATION

The first National Lawyer Qualification Examination in the history of People's Republic of China was held

in September 1986, with 1,134 passes out of 29,000 registrations in total. By 2000, this examination lasted for 15 years, held 12 times, participated by 1,500,000 examinees. The time of the exam had changed several times. At the early stage, the exam was held twice a year in 1988, 1990 and 1992, since 1993, it held once in October every year. Examinees can be nationals with associate degree; or residents from Hong Kong, Macau and Taiwan and foreigners, whom had participated in Mainland legal training. Many people become a lawyer through this way, promoted the rule of law in China actively.

Before 1995, judges and prosecutors were nominated by courts and procuratorates respectively, and appointed by the same rank National People's Congress. While the lawyer profession were running examinations publicly, the court system and the procuratorate system were exploring interior selection actively. When *the Judges Law of People's Republic of China* and *the Public Procurators Law of People's Republic of China* promulgated, according to this statute, the two systems had set an examination for newly appointed judges and prosecutors, which means to succeed in the examination is a must before nomination. Since then, the Supreme Court had held the newly appointed judges examination for three times, and 4 times for newly appointed prosecutors by the Supreme Procuratorate. A roughly 70,000 people got the qualification by passing the examination.

Given the fact that these three examinations are different in nature, threshold and uniformity, with the appeal from scholars and the public, the ruling layer in judiciary commenced the unification of the two examinations. In July 2000, when the 16th conference of the 9th Standing Committee of the National People's Congress were examining the drafts of *the Judges Law of People's Republic of China* and *the Public Procurators Law of People's Republic of China* primarily, some committee member suggested the establishment of

national judicial examination (hereinafter referred as NJE). During the consultation of these two laws in related departments, they proposed the same suggestion as well.

The 22nd conference of the 9th Standing Committee of the National People's Congress passed the amendments to *the Judges Law of People's Republic of China and the Public Procurators Law of People's Republic of China* in June 2001, stipulating "Persons to be appointed as judge, prosecutor for the first time or acquire lawyer qualification shall take the uniform national judicial examination. The State Council judiciary department, the Supreme People's Court and the Supreme People's Procuratorate jointly formulate the Measures on National Judiciary Examination, the State Council judiciary department implements. This marks the formal establishment of the NJE System. The establishment and implement of the NJE are the necessary requirement for the Communist Party Central Committee practicing basic statecraft "rule of law and building a socialist country ruled by law". It is an impetus for not only improving and securing the quality of judges, prosecutors and lawyers but also perfecting the judiciary system and ensuring the judiciary justice.

Since 2002, the NJE is a must for persons who want to be appointed as newly judges, prosecutors or acquire lawyer qualification. In addition, the Ministry of Justice informed that the NJE is a must for being a notary too.

On April 28, 2018, the Ministry of Justice of the People's Republic of China promulgated the "Implementation Measures for the National Uniform Legal Profession Qualification Examination". The judicial examination will be replaced by the "National Unified Legal Professional Qualification Examination. (hereinafter referred LPQE)" The civil servants who first engaged in the administrative punishment review, administrative reconsideration, administrative ruling, and legal counsel in the administrative organs were also included in the unified legal professional qualification examination

system, which clarified the scope of the legal professional community. Although these are administrative work, they should have a higher legal knowledge and rule of law literacy. The form of the legal professional qualification examination has also changed. It is divided into two parts: the objective examination and the subjective examination. The candidates who pass the objective examinations can take the subjective examination, and the objective examinations score is valid for this year and the next examination. The reform of the legal professional qualification system is not only the reform of the name and form of the examination, but also the construction of a more professional and higher-capacity legal professional community.

Hereto, the LPQE has formally established. Hundreds and thousands of people started their own expedition of the LPQE with their legal profession dream.

From the last National Lawyer Qualification Examination in 2000 to the first LPQE, due to this interval, there are 360,347 people registered the first LPQE. This number is three times the figure in 2000, 18 times as many examinees as in Japan. The difficulty of the LPQE increases with the growth in number of examinee. Since 2002, LPQE was held once annually. The pass rate and cut-off score are decided jointly by the Ministry of Justice, the Supreme People's Court and the People's Procuratorate, then published by the Ministry of Justice. Examinees who meet the cut-off score can obtain the Legal Profession Credential from the Ministry of Justice by taking a few procedures. Newly appointed judges, prosecutors and lawyers will be selected from these credential holders.

The following table shows the statistics of cut-off scores, cut-off scores in certain region, number of registered examinees, number of participated examinees pass number of people, and pass rate from 2002 to 2013.

Year	Cut-off scores ¹	Cut-off Scores in Certain Region ²	Number of Registered Examinees	Number of Participated Examinees	Pass Number of People	Pass Rate
2002	240	235	36	32.4	24800	6.68%
2003	240	225	19.7	17.1	17000	10.18%
2004	360	335	19.5	16.9	22400	11.22%
2005	360	330	24.4	20.7	31664	14.39%
2006	360	325	28	24.1	42000	15%
2007	360	320	29.4	24.9	56000	22.39%
2008	360	315	37	31.1	67000	25%
2009	360	315	41	35.3	68000	22%
2010	360	315	39	32.6	52000	16%
2011	360	315	41.5	34.7	35000	11%
2012	360	315	40	33.2	33200	10%
2013	360	315	43.6	33.2	26000	9%
2014	360	315	45.4	35.3	35300	10%
2015	360	315	48.8	36.3	40260	11%
2016	360	315	58.8	44.5	53400	12%
2017	360	315	64.9	55.6	89210	13.75%
2018	180/108	160/95	60.4	47.3	110000	23.2%

Source: <http://www.dffyw.com/sifakaoshi/xx/201405/35898.html>, visited on 8th December 2014.

From what this table has provided, the pass rate of the LPQE varies in between 10% to 20%. However, the LPQE guide published by the Ministry of Justice includes jurisprudence, constitution, economics, international public law, international private law, international economic law and legal profession moral et cetera. With the increasing difficulty of the knowledge required by LPQE in width and depth, LPQE has renowned as “the first (and difficult) examination” in China.

2. OPPORTUNITIES AND CHALLENGES BROUGHT BY LPQE

The societal rank of a career is proportional to what role it plays in society, and inversely proportional to how many people can play this role. The implementation of the LPQE, elevates the threshold of legal profession, constantly promotes the societal rank of legal profession, continually adapts to the requirement from “the rule of law”.

Opportunities and challenges brought by LPQE

2.1 Increased Co-movement Between the LPQE And Legal Education, Made the Legal Education Better Adapted to the Requirement From the Time and Practice

Legal education in colleges and universities has weakly linked the practice and theory. Additionally, this problem caused the missing cooperative relationship between the legal education and legal practice. As a sheer professional skill test like LPQE, the examination includes many cases, which requires the legal education in higher education to reconstruct the relationship between theory and practice, in favour of reinforcing the teaching research in skill of legal practice and legal thinking in colleges and universities.

Meanwhile, this brings challenges to legal education in higher education as well. Nowadays, because many teachers in higher education has not been involved in practice actively, gathered various practical information and data information relating to legal education, theory priors in their teaching. In addition, due to the increasing difficulty in the LPQE both in width and depth and pressures from confront teaching and researching, it is unrealistic to ask teachers cover the skill training of the LPQE preparation.

2.2 Enhancing the Sense of Honour and Stability in the Group of Legal Profession, Making a More Extensive Social Foundation for Legal Education

According to the *the Judges Law of People’s Republic of China* and *the Public Procurators Law of People’s Republic of China* and *the Law of People’s Republic of China on Lawyers*, all newly-appointed judges,

prosecutors and lawyers must pass the LPQE for practice. This criterion hinders non-qualifiers from practising and ensures the quality of legal professions as a whole. On the other hand, this also attracts talents in society and ensuring legal education runs with reliable, outstanding students.

2.3 Providing Institutional Guarantee for Transformation From Public Education to Elite Education in Legal Education

What legal education in China has now can only be called public education, and there is a huge gap exists compared with the western countries’ legal education. However, the LPQE will help to realise the pre-selection in legal profession become more and more elitist. This is because the establishment of the LPQE is a positive commencement, a selection system, and its function is to take outstanding talents on board (Liu, 2007). With the elitism progress of legal profession, it will enhance the authority of justice, promoting the acknowledgement of public. And the LPQE guarantees systematically for the elitist development in legal education.

2.4 Boosting the Revolution of Legal Education in Higher Education

Since the resumption of the College Entrance Examination in 1977, the scale and the number of people in legal education has been improved, especially after the expansion in the late 20 century, it broke out a record. Universities and colleges are continually researching on content and method of legal education for standing still in competition. After the implementation of the LPQE, the revolution of the legal education comprises elements from it. The form, content, discipline and the pass rate has brought challenges to legal education. In order to arm the graduate with competitiveness, law schools/departments in China has managed to choose a route which combined with the LPQE, and take this exam as a factor in the revolution of legal education.

3. THE LPQE MAY FORM A “DOUBLE SCHOOL” PHENOMENON

The increasing value and difficulty of the LPQE make the current legal education difficult to deal with in universities and colleges. In the meantime, some training school, specialised in researching the LPQE and helping student pass the LPQE, may form the so called “double school” phenomenon.

3.1 Positive Effect Brought by “Double School” Phenomenon

Pursuant to the coverage and difficulty the LPQE has, the teachers in higher education cannot cover fully in class. In other words, students who wants to survive from

the 10% to 20% pass rate, the teaching in class may not enough. Therefore, training school that aim at helping students pass the LPQE appears, such as Houda Fakao, Sanxiaomingshi, Wanguo, Zhonghe et cetera. All these training schools are featured with famous teachers, some schools hired teachers from higher education who are well experienced in teaching and researching the LPQE, but for saving cost, there are some schools hiring postgraduates as their teachers. In terms of quality, the teachers in training schools are patchy, but they did bring positive effects to the whole legal education.

a. Helping undergraduates by going through important disciplines and understanding core knowledge in short term

The training session of the LPQE normally takes 288 lessons¹ to systematically lecture and finish jurisprudence, constitution, administrative law, administrative procedure, criminal law, civil law, criminal procedure, civil procedure, arbitration, commercial law, economic law, international law, international private law, international economic law, all these courses need at least 600 lessons in universities and colleges. Undergraduate education takes four years in China, but the LPQE training session is quite intensive, with 8 lessons daily, 36 weeks to finish all the main courses in higher education. Under such circumstance, it requires only outstanding and excellent teachers, and they need use every second efficiently in their teaching. Students who had been trained at training schools often commented “four years learning in university is not worthy than one month in training school. Thus, it can be seen that the LPQE training school can help undergraduates master the most important legal knowledge.

b. Prompting teachers in higher education researching the LPQE and engaged in teaching actively

When each term ends, students will assess the teaching, which is organized by the authority nearly in every universities and colleges in China. And this assessment is closely related with the destiny of this course, the course may be cancelled, if it ranked among the last ones for several times, even worse, the teacher may be fired. The importance of the LPQE as to the law school students, the students would take cohesiveness between the LPQE and the teaching into consideration while assessing. Putting the teaching aside, at least the class cannot be contrary to the LPQE. In this situation, between the researching, teachers have to pay attention to the guide of the LPQE, and make efforts to integrate the LPQE into the teaching.

c. Significant contribution to the progress of “rule of law” in China

The training schools has made a group of famous teachers specialised in researching the LPQE. Those teachers will

predict the examination based on the past tests and the guide of the year. However, for the people who design test, they need to find a new approach to examine the student. With this guessing and anti-guessing game, the difficulty of the LPQE increases annually. Back to 2002, the time of the national lawyer qualification examination, there was a few training schools, students can survive from the test by self-preparation. But now, without training session and lecture, the students can hardly pass the LPQE. Therefore, the training school has contributed to the test difficulty and the “rule of law” of China progress.

3.2 Negative Effects Brought by the “Double School” Phenomenon

a. Repetitive education structure

If we set “Passing the LPQE” as the only criterion to assess talent, it may cause the legal education in universities and colleges become an elementary education process, the training school will lead the legal education. In Japan and Korea, due to the low pass rate of their judicial examination, it makes the training school rampant outside of the campus and because of this the training school plays a crucial and leading role (He, 2003). For passing the LPQE, students often choose to enrol the training schools, inevitably, this would form a repetitive education structure and bring negative effects to the legal education.

b. The awkwardness of legal education

The “double school” phenomenon makes the legal education lost in an awkward situation. Some training school advertise examination orientated slogans and sentences like “one day in training school is equivalent to study for three months”, it is thought provoking for legal educators. For students who are preparing the LPQE, if they cannot acquire knowledge what the LPQE needs, law school student will abandon the interest and turn to be more orientated to examination. This would make the legal education lost in an awkward situation (He, 2003).

3.3 The Fusion of “Double School” Phenomenon in the Era of Internet

While the training schools are bringing positive effects to legal education, negative effects brought by the fastness and practicality of those training sessions as well. It has trained a group of people who are capable of understanding the pattern of the LPQE in a short term, but that kind of capability is for the examination only, and this is a hidden danger for educating the legal talents.

However, the rise and development of the internet have perfectly enlarged the positive effect of “double school” phenomenon. In June 2013, the first free LPQE training school “Houda Fakao” established.² It based on the open and developing internet platform, broke traditional

¹ One lesson lasts 45 minutes.

² For more information about Houda Fakao, please go visit: www.houdask.com.

training mode, constructed a creative teaching module and created a blueprint about the field of training.

a. Houda coordinates with the modern legal education

“Houda Fakao” has provided a free and open platform, centred with the students’ needs, by offering free lessons, valued add-on services, it is a one stop website for students taking classes, doing exercises and having tutorials. With the interactive mode, it realised the non-hinder communication between student and lecturer, and made the students learn positively and actively with great interest. Everyone can study on Houda website without signup, it is very convenient. Thus, the occurrence of Houda is not to replace the traditional legal education, but to complement each other.

b. No repetitive education

“Houda Fakao” has hired a group of excellent teachers from higher education who has researched the LPQE for server years. Those teachers can tell the difference between the legal education and the LPQE. In the training session they mainly lecture the pattern of the LPQE; back to the law school, they introduce theoretical knowledge to students. The teachers’ arrangement of “Houda Fakao” can avoid the repetitive education caused by the “double school” phenomenon.

c. “Houda Fakao” has Sufficient lessons, different from other training schools in nature

“Houda Fakao” has broken the limits of time and space, it makes students who are enthusiastic about law can improve themselves between their university study and prepare the LPQE as well. With sufficient lessons, every discipline has 5 phases, the total amount of each discipline has already exceeded the time in universities and colleges, enough for students building a solid legal basis.³

After the establishment of “Houda Fakao”, over 2 million views and downloads, 8 thousand students enrolled offline training session, 120 thousand students registered, and 400 thousand volumes of book sold and 40 tutorial centre developed, all these happened in one year. Such an impressive performance made it become a paragon in Chinese judicial education in the era of internet. This is also the sign of the fusion of “double school” phenomenon in the era of internet.

4. THE LPQE URGES THE REVOLUTION OF THE LEGAL EDUCATION

4.1 Define the Orientation of the Legal Education Under the LPQE

Legal education in China is multi-layered, extensive and patchy. Though China has implemented the LPQE, it

³ Civil law, normally has 72 lessons in undergraduate education. But there are five phases in “Houda Fakao”, 17 days, 8 hours daily, 136 lessons in total.

is unrealistic to define the orient the legal education in undergraduate uniformly. Each universities and colleges should set their position by their own. Take the 5 political science and law universities which was led by the ministry of justice as example, they have excellent teacher with legal education history, they could mainly focus on cultivating judges, prosecutors and lawyers. For those newly established law schools, they could concentrate on educating liberal law education. As to law school in the comprehensive university with strong academic research capability, they can foster research talent.

4.2 Benign Interactive Correlation Between the Legal Education and the LPQE

There is a huge gap between the current legal education and the LPQE in the idea of teaching, curriculum setting, content of teaching, and the teachers. To form a benign interactive correlation between the legal education and the LPQE, transformation must be taken as following aspects:

a. The transformation of the idea of teaching and the curriculum setting

As Roscoe Pound put: “Not all Harvard Law School graduates work as lawyer permanently, some of them are directors or managers in commerce, some of them are serving in bank and finance, some of them are engaged on artistic writing with remarkable performance. Their success cannot live without the training on ability of training from good legal education. The significance of legal education is not the pass rate of the examination, but the cultivation of law capability.” (Zhang, 2002)

Therefore, the legal education should not only adapting to the idea of legal education, but also changing the curriculum setting, teaching students the basic legal knowledge and cultivating students applying the knowledge and their profession competence.

b. Renewal of teaching content

Legal education shall focus on instructing the way of learning, cultivating the idea of law. Legal education is not the law publicity, but to strengthen the understanding and thinking of the current legal system, analysing the jurisprudence behind the statute, including the shortcoming and defect analyse, and result prediction. From the content of teaching, the legal education needs to go through the 14 disciplines, and set other applied law disciplines as extended courses.

c. Optimizing the teacher resources

With the expansion of legal education in 1920s, the teacher body was severely insufficient. But now, this phenomenon has changed; the competence of teacher has been increased as a whole. Teachers who wish to cover the difficulty and width of the LPQE, they need to put plenty of time to research, however, many teachers only focus on research or practice as a part-time lawyer, rather than allotting time to teaching, let alone the combination of the teaching and the LPQE. One issue needs to be considering

is to courage the teachers' enthusiasm for teaching and rearrange the teacher resource.

d. Promoting the benign correlation between the legal practice and legal education

The science of law is an applied social science, while teaching students the jurisprudence, courses on case analysis should come with, and cultivating student applying law to analyse problems. Additionally, universities and colleges should set up moot court course after the substantive law and procedural law, for promoting the benign correlation between the legal practice and legal education.

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