
HIGHER RIGHTS OF AUDIENCE ASSESSMENT

IN RESPECT OF CRIMINAL PROCEEDINGS

THE PRACTICAL ASSESSMENT

Instructions to candidates for the practical assessment

Introduction

The practical assessment is focused on a criminal trial before a judge and jury in the Court of First Instance.

Clarke is charged with one count of murder, contrary to Common Law and punishable under section 2 of the Offences Against the Person Ordinance, Cap. 212.

The Indictment can be found in the attached 'Bundle of Evidential Materials'.

In order to complete the practical assessment, candidates will be required to do the following:

1. to make or oppose a High Court bail application for Clarke who had been charged with murder; **and**
2. to participate in a mini-trial.

Your role as solicitor-advocate

When you receive these instructions, you will at the same time be advised whether you will appear as counsel for the prosecution or counsel for the defendant.

As prosecuting counsel, of course, you will rarely, if ever, have sight of the proof of evidence taken from a defendant by his legal representatives. For the purposes of this practical assessment, however, the defence materials are made available to you. This is because there is a limited time within which the required exercise (including examination-in-chief and cross-examination) is to be conducted. Accordingly, it is to be assumed that all witnesses, both for the prosecution and the defence, have given evidence in accordance with their statements except where in examination-in-chief they have diverged from or contradicted those statements. Should there be any such divergence or contradiction, for the purposes of the practical assessment, it is to be taken that they have arisen in the course of the witness's testimony. In cross-examination, therefore, it will be put to the witness that one part of his or her testimony has been contradicted by another part.

Dress

You will be expected to dress appropriately, that is, a solicitor would dress when appearing in open court in the High Court: you should therefore wear a gown and bands.

Getting to the heart of the matter

It is important to note that, with each candidate being given only a limited time span to complete each allocated exercise, it is important to adhere strictly to the following guidelines:

- Addresses to the court or to the jury must be structured and succinct, getting to the heart of the matter without delay.
- It is to be assumed that the court or jury have a very good understanding of the background facts and accordingly, while arguments must of course be put into a proper factual context, there is no need for long, time-consuming recitations of the background facts.
- Remember, in addressing the jury it is not the role of a solicitor-advocate to instruct them on the law. That is the function of the judge.

Analysis and structure

Candidates are expected to demonstrate a structured and analytical approach in all of the exercises required of them. The Examining Panels are required to pay special attention to whether or not a structured approach has been clearly evidenced, that is, a presentation which demonstrates that it is based on careful analysis and a choice of approach best suited in the limited time available to advancing the case that is advocated.

BEFORE the High Court Bail Application

You must prepare a skeleton argument in relation to the application supporting the position of the party you are representing. You have been advised separately which party this is.

The Skeleton should be typed. It should not exceed 4 pages (A4, one-sided, 12 font, single spaced).

You must email your skeleton argument in MS Word format to the Secretariat of the Higher Rights Assessment Board at info@hrab.org.hk by **no later than 3:00p.m. of the Wednesday prior to the day of the assessment.**

Upon receipt, the Secretariat will ensure that the party opposing you in the application is given a copy of your skeleton argument. The members of your Examining Panel will also receive copies so that they can be considered before the assessment itself takes place. You will

therefore understand that, if you submit your skeleton argument late, it may not be marked and will place you at real risk of failing the assessment.

THE CONDUCT of the High Court Bail Application

The application for bail is made by the solicitor-advocate for Clarke and opposed by prosecuting solicitor-advocate in the High Court bail proceedings. For the purpose of this application, you can consider the Summary of Prosecution Evidence, the witness statement of PC Simon and Defence notes of Clarke.

Your oral application / oral argument in opposition will last a maximum of 15 minutes.

There will be no formal reply to submissions.

That being said, you should be prepared to deal with judicial interventions and questions in relation to your submissions or indeed submissions made by your opposing counsel.

THE CONDUCT of the mini-trial

Witnesses

Only one prosecution witness, i.e. PC Simon, and the accused will attend the mini-trial.

You must therefore be prepared in a structured and analytical manner to examine and cross-examine the witness or the accused.

(1) Prosecution witness

The following witness will appear at trial to give oral evidence on behalf of the prosecution:

1. PC Simon

(2) Defence witness

The following witness will appear at trial to give oral evidence on behalf of the defence:

1. Clarke (the accused)

DURING the mini-trial

You can assume:

1. The witnesses will appear at the trial in the order listed above; and
2. For the purposes of the mini-trial, it is to be assumed that the evidence of all witnesses, other than those called, is to be, and has been, fully in accordance with their statements.

Opening Speech

If you are allocated the role of prosecuting counsel, you will be expected to make a brief opening speech to the jury. It will last a maximum of 5 minutes.

If you are allocated the role of defence counsel, you will be expected to make a brief speech to the jury at the opening of the defence case. It will last a maximum of 5 minutes.

Conduct of the examination-in-chief/cross-examination

If you are allocated the role of prosecuting counsel, you will be expected to conduct an examination-in-chief of one prosecution witness. It will last a maximum of 10 minutes. If you are allocated the role of defence counsel, you will be expected to conduct a cross-examination of that witness. It will last a maximum of 15 minutes.

If you are allocated the role of defence counsel, you will be expected to conduct an examination-in-chief of the accused. It will last a maximum of 10 minutes. If you are allocated the role of prosecuting counsel, you will be expected to conduct a cross-examination of the accused. It will last a maximum of 15 minutes.

Interventions/Objections

You are also required to

- deal with any interventions/objections made by the advocate representing the opposing party;
- take any objections, as you think appropriate, to the questioning of witnesses by the advocate representing the opposing party; and
- deal with any judicial interventions/questions as and when they arise.