

Bar Association of Seychelles

The Seychelles bar exams: the way forward

Seychelles Law Journal, 12 October 2011

This version is available: <http://radar.brookes.ac.uk/radar/preview/e308c4bc-2697-ef08-99f0-7fd9763882c1/1/>

Available on RADAR: April 2013 with permission from the Bar Association of Seychelles Law Journal

Copyright © and Moral Rights are retained by the author(s) and/ or other copyright owners. A copy can be downloaded for personal non-commercial research or study, without prior permission or charge. This item cannot be reproduced or quoted extensively from without first obtaining permission in writing from the copyright holder(s). The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the copyright holders.

This document is the author's final version of the journal article. Some differences between the published version and this version may remain and you are advised to consult the published version if you wish to cite from it.

THE SEYCHELLES BAR EXAMS: THE WAY FORWARD

[The Bar Association of Seychelles prepared and sent the following paper to the judiciary for their consideration in August 2011.]

A Paper Prepared By The Bar Association of Seychelles

1. Introduction

There is no clear structure or syllabus for the Seychelles Bar Exams. In the past, there may have been no sense of urgency to put some structure in place, but with a larger base of Seychellois students enrolled in the University of Seychelles' English law LLB programme, and the interest of foreigners in qualifying as Seychelles attorneys, it is now imperative that some structure be put in place for the Seychelles Bar Exams.

In time, this could be the precursor to Seychelles' very own LLB programme in Seychelles Law.

This Paper does not pretend to be the authoritative guide on how things should be done, but it suggests a way forward. In particular, it makes proposals as to how the existing system of bar exam could be improved and developed into a structured programme that would more appropriately address the contemporary needs of vocational training for aspiring lawyers in Seychelles. It is therefore hoped that this paper would stimulate interests in the subject generally and in particular at the level of the Ministry of Justice and the Supreme Court (both with statutory mandate for the organisation of the bar exam). It is also hoped that the ensuing debate will inform the elaboration of a new Seychelles Bar Exam program in good time for the first batch of University of Seychelles LLB students graduate in mid 2013.

Divino Sabino
Secretary of the Bar Association of Seychelles

May 11, 2011

2. Current Situation

Presently, the Legal Practitioners Act ("**LPA**") entrusts the preparation of the Seychelles Bar Exams ("**SBE**") to an Examination Board appointed by the President of the Republic of Seychelles in consultation with the Chief Justice of the Supreme Court of Seychelles (section 20 of the LPA). The Examination Board consists of at least 3 persons appointed from persons who are "knowledgeable in law generally and in particular the laws of Seychelles".

The Examination Board regulates the conduct of the SBE, subject to secondary legislation specifying the legislation which must be covered by the SBE. These legislations are:

1. The Civil Code of Seychelles
2. The Commercial Code of Seychelles
3. The Seychelles Code of Civil Procedure
4. The Penal Code
5. The Criminal Procedure Code
6. General Principles of the law of evidence
7. The Companies Act
8. The Immovable Property (Judicial Sales) Act
9. The Civil Status Act
10. The Children Act
11. The Matrimonial Causes Act
12. The Immovable Property (Transfer Restriction) Act
13. The Land Registration Act
14. The Mortgage and Registration Act
15. The Constitution of the Republic of Seychelles

Other than the above list of legislation there is no detailed syllabus or mention of any thematic or organic area of law which needs to be examined. Past examination papers show that there is no clear pattern on what the Examination Board assesses or on the format of the examinations. This has led to the bar exams being very tough in certain years and uncomfortably easy in others, indicating a lack of rigour and standard in the process.

Moreover, the regulations does not identify particular skills that should be examined. For example, there is no provision for the examination of practical skills such as court advocacy and drafting of pleadings – skills that are essential for all attorneys. This might explain why in some instances pleadings and advocacy in our courts leave much to be desired, impeding the court process instead of aiding it. Areas that should also be covered by the Bar Exams are professional ethics, negotiation skills, interviewing or conferencing skills etc.

There are many other areas of the law (including areas of recent legislations) that should also be examined, e.g. revenue laws, anti-money laundering laws, laws relating to the offshore industry, competition laws, consumer protection laws etc.

3. The Purpose of a New SBE: The New Breed of Attorneys-at-Law

The principal object of the new SBE should to create a new breed of attorneys, who are well grounded in the substantive and adjectival laws of our mixed legal system. These Attorneys should therefore, be comfortable with our French-based Civil and Commercial Codes as well as our English inspired laws and ready for appointment as State Counsel to advise the Government and its numerous departments and parastatal bodies or join the private practice.

In other words, a new SBE should aim at raising quality and standards in the legal profession. The spin-off of this should positively impact the administration of justice and public confidence in our legal and judicial system and, in turn, promote investor confidence in the country.

4. A Syllabus

The first task is the preparation of a **General Syllabus** outlining the areas of the

law that should be examined. This should contain areas of substantive and adjectival law and also areas on attorney skills. Ideally, a candidate should be able to take the SBE after a year of studies. Therefore, the General Syllabus should be curtailed to the areas of the law that the majority of attorneys are expected to encounter in their practice. The following areas of substantive and adjectival law and attorney skills should be examined (Examination Areas):

- (i) Law of Obligations (Delict, Contract, Quasi-Contract, Unjust Enrichment etc based on the Civil Code)
- (ii) Criminal Law (The Penal Code, Misuse of Drugs Act, Anti-Money Laundering Act)
- (iii) Commercial Law (company and partnership (both onshore and offshore); bankruptcy and insolvency; securities)
- (iv) Constitutional and Administrative Law
- (v) Property Law (based on the Civil Code, Land Registration Act, Immovable Property (Transfer Restriction) Act)
- (vi) Employment Law (based on the Employment Act and numerous regulations)
- (vii) Family and Succession Law (divorce, matrimonial causes, maintenance, child custody, domestic violence; testacy and intestacy)
- (viii) The Seychelles Legal System (history, sources of Seychelles law, court system and tribunals; and the Seychelles legal profession)
- (ix) Civil Litigation (including drafting of pleadings & evidence (based on Code of Civil Procedure, Immovable Property (Judicial) Sales Act, Courts Act, Court of Appeal Rules, Evidence Act).
- (x) Criminal Litigation (including drafting of pleadings & evidence (based Criminal Procedure Code, Courts Act, Court of Appeal Rules, Evidence Act)
- (xi) Professional Ethics
- (xii) Advocacy

The above General Syllabus is only a suggestion. After a General Syllabus has been decided then for each Examination Area in the General Syllabus, a **Detailed Syllabus** should be elaborated. The Detailed Syllabus should list out what exactly a student is expected to know. The purpose of the Detailed Syllabus is to allow a student to know what he is expected to learn in each Examination Area in the General Syllabus. The Detailed Syllabus should give particular emphasis to areas that are most frequently encountered by attorneys. The SBE should not seek to copy an academic degree programme but must be more practice oriented, i.e. formulated to test the candidate's ability to apply his knowledge of substantive and adjectival law to solve practical legal questions.

5. SBE Manuals

A Study guide (approx. 20 to 100 pages each) could be written for each Examination Area. Attorneys and/or members of the Judiciary could take the task of producing a first draft for each of these study guides. Thereafter each study guide should be submitted to an Editorial Board for its editorial control. The exercise would require some funding, not least to incentivise attorneys to take on task of writing the study guide, but also to meet publication costs. These funds could come from the Government and also foreign aid agencies e.g. UNODC/the Commonwealth etc.

The Editorial Board should comprise of attorneys with the relevant credentials.

The Editorial Board could be appointed by the Bar Association of Seychelles in consultation with the Judiciary or by the Examination Board. It would then be the responsibility of the editorial board to appoint attorneys to produce the first drafts of study guides. The editorial board would then review the draft study guides to produce the final drafts. The editorial board would ensure that the study guides are updated from time to time. Perhaps one of the most important of such study guides would be the one on the Seychelles Legal System; such a publication would be an essential introduction to the intricacies of the unique legal system of the Seychelles. It would also be helpful to all individuals involved in one way or the other with the Seychelles Legal System (Government officials, members of parliament, banks, investors etc). It is envisaged that it could incorporate all of the information contained in the website of the Bar Association of Seychelles (www.bas.sc) and the website of the Seychelles Legal Environment (www.seychelleslegal.net) and more, and in greater detail.

6. A Course Leading to an Academic Award

Once the Detailed Syllabus and the study guides have been produced, a one year academic programme could be run, with the approval of the Chief Justice, by the University of Seychelles. In line with the existing law, only students who have successfully completed an LLB programme or equivalent would be eligible to enter the SBE programme. Attorneys and members of the judiciary may be called upon to assist as lecturers. At the end of the year exams shall be held in conformity with a pre-established format. There must be consistency in the format of the exams. Substantive law topics could be assessed through essay-based examinations. The exam on pleadings could be in the form of drafting a set of pleadings based on particular facts. The exam(s) on advocacy may involve verbal submissions/arguments before a panel or may be recorded and assessed later.

With the involvement of the University of Seychelles, the successful completion of the SBE, could lead to the award of a (Postgraduate) Diploma in Seychelles Law. The successful candidates may then commence pupillage at an approved law chamber. Consideration should be given to amend the LPA to allow successful SBE candidates to serve only one instead of two years of pupillage given that the SBE course would ground them with solid knowledge of Seychelles law. Eventually, the law could be amended so that all candidates would need to pass the SBE in order to be eligible for pupillage and admission to the Seychelles Bar.

7. The Cost factor

A credible Bar vocational training programme may bring important cost benefits to the country.

In the past most of our lawyers underwent their vocational training outside Seychelles and mostly in England. These foreign bar programmes might not be very suitable for legal practice in Seychelles, but they enjoyed the benefit of being delivered by reputable institutions and of being rigorous and of consistently high standard. But training, subsistence and accommodation costs in England for instance are now quite prohibitive (the Bar tuition costs alone are up to GBP 15,000 in London). Scholarship and other forms of financial assistance are not as forthcoming as they used to be. Many a Seychellois law graduate cannot now afford the bar training costs in England. The solution lies in our own bar vocational training programme. There is no question that it must, itself, involve some charges for candidates if it is to be a sustainable and benefit from the

participation of experience Seychelles lawyers as lecturers and in the development of the course material, but such costs are not expected to be as high as costs of overseas bar training.

Seychelles bar training, if properly established and managed, would not only be better suited for our legal system but will offer a far more cost effective option to law graduates seeking to pursue their vocational training and qualify as Seychelles lawyers.