

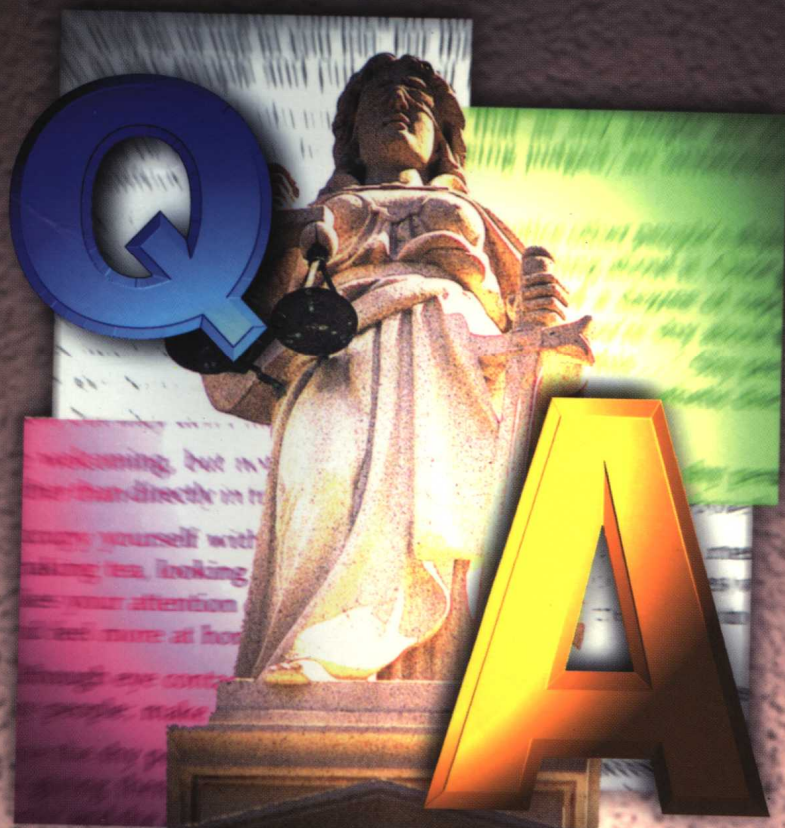
H.K. LAW FOR BEGINNERS Q&A 香港法律試題精解

By Marcus B.Y. Hung & Paul T. P. Kwan

洪秉鉞 關道培 編著 鄭振武 譯

英漢對照：

- 助您成功應考各類法律專業試
- 中銀集團培訓中心推薦用書



商務印書館

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HONG KONG LAW FOR BEGINNERS — Q & A 香港法律試題精解

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Preface

It is not uncommon for students who take great pains in studying and preparing for law examination still fail in the end. The problems most students encounter may be that either they were not preparing or studying for the examination in a proper and effective way or they lacked the tactfull skills in handling examination questions. The key to success is therefore that they must improve their learning attitudes.

This book is not intended to replace the conventional textbook on the subject. The purpose of this book is to help students to experience the dynamic approach to law and to succeed in their first, foundation or elementary stage of professional examinations such as:

- **The Chartered Institute of Bankers, Hong Kong**
- **The Hong Kong Institute of Company Secretaries Limited**
- **The Hong Kong Society of Accountants**

This book contains a variety of questions reasonably cover the essential part of the syllabus for most law examinations. It concentrates primarily on typical examination questions and to give students useful guidance in approaching law examinations on those subjects which students may come across and which students are expected to be fully conversant with.

Normally, a law paper covers a wide variety of topics and students are required to memorise a great amount of work. The answers suggested in this book attempt to resolve examination question in a simplified manner. It provides illustrations to students the coverage an examiner is looking for in an answer to a law question at the first level of a professional examination. It is hoped that students would benefit from reading this book and acquire the technique in taking examination questions.

It should be noted that the answers given to the questions are

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intended as a guide only and are based on the authors' experience in this subject. It just gives students an indication as to the ways in which different types of problems may be handled.

Some of the cases are only briefly mentioned in this book to achieve our objective of simplicity in its writing. However, in the examination, students are always expected to cite relevant legal authorities (both case law and statutory provisions) in support of their answers. Such details could be found in any of the textbook.

Lastly, students should be reminded that though examiners tend to be selective in choosing topics to be examined, it is by no means a correct attitude towards examination that revision can also be selective. Success at examinations depends not on fate but on hard work. This book serves to assist you in deriving the maximum benefit from your hard working.

Marcus B. Y. Hung
Paul P. T. Kwan

序 言

煞費苦心學習及準備法律考試的學生最終未能及格的現象並不罕見。大部分學生可能面對的問題是，他們或者沒有以一正確及有效的方式準備考試，或者缺乏解答考試題目的嫻熟技巧。要成功通過考試，關鍵是他們必須改進學習方法。

本書並不擬替代有關科目的傳統教科書。本書的目的是幫助學生們體驗如何有效地解答法律考題，及爭取通過他們所參加的下述專業團體的第一階段基礎或基本的法律專業考試：

- 特許銀行學會香港分會
- 香港公司秘書學會有限公司
- 香港會計師公會

本書所載錄的各類問題適量地涵括了大部分法律考試大綱內容的主要部分。其基本是專注於具代表性的考試題目，並為學生可能偶然遇見的題目及被預期應完全通曉的那些題目，向學生提供解答法律考題的有益指引。

法律考卷通常包括了範圍很廣的題目，學生需要記憶許多的功課內容。本書所建議的答案擬以最簡單的方式解答法律考題。其就考試者對第一階段專業考試的法律考題所要求的答案內容，為學生提供了例證。希冀同學可經閱看本書而從中受益，並學會解答法律考題的技巧。

須注意的是，就本書的問題所提供的答案擬僅作為一指南，且是基於著者對有關科目的經驗而作出。其只是就解答

不同類型考題的方法為學生提供一指引。

為使內容簡單明確，本書對某些判例只是簡要提及。但是考試通常要求學生得引述有關的法律來源（包括判例法及成文法的規定）以支持其答案。此類法律的詳細內容在任何教科書中均能查到。

最後要提醒同學的是，雖然考試者傾向於在選擇考試題目時有所選擇，但對考試而言，選擇性地進行溫習，則絕對是一不正確的態度，要成功通過考試並不是靠運氣，而得靠努力學習。本書擬用以協助你從努力學習之中獲得最大的益處。

洪秉鉞

關道培

（鄭振武譯）

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Studying for a First Stage Law Examination

You are obviously in the course of studying for the first stage of law examination. This chapter is written specifically for you and is designed to help you to understand:

- the standard expected of the first stage law examinations;
- the techniques to answer examination questions; and
- the discipline required in your study.

The first stage law examinations as organised by the following professional bodies such as:

- The Chartered Institute of Bankers, Hong Kong
- The Hong Kong Institute of Company Secretaries Limited
- The Hong Kong Society of Accountants

are not easy. They are a test in both quantity and depth of law materials. They should therefore only be taken by students who are willing to study effectively and devote sufficient time and effort to their work.

Today, Hong Kong law undergoes rapid changes. This means that students must keep up-to-date with new legal materials that would have an important bearing on their examinations. The law syllabus of your examination must be reviewed to ensure the materials you have prepared for the examination are both relevant and up-to-date. The examiners' reports must be studied to discover common mistake and to acquire guidelines to the answer.

Before the examination, you must prepare a working plan which contains the revisions of all legal principles and cases as well as past examination questions. You should try to get the "feel" of the law paper so that you know and understand the nature and structure of the examination. You should try to remember such topics requiring memory — reference made in this book and the

past examiner's reports may be useful.

On the day of the examination, you must:

- make sure that you know when and where the examination is taking place.
- check that you have the correct equipments — pens, pencils, ruler, fluorescent marker pen, etc.
- arrive in good time.

The first minutes of the examination are crucial and if spent constructively, will form the foundation of success. You should spend the first 5-10 minutes in:

- assimilating the instructions
- analysing and selecting the questions
- allocating your time
- planning your answer

You should answer the compulsory question (if there is any) first, because it is often the longest and most complex question and it is psychologically beneficial to have this question “under your belt” as soon as possible.

Next, you tackle the questions you know best.

In answering the question, you should try to cite cases and statutes, wherever necessary. In a problem type question such as: “Advise George his legal position”. You should write in a third person form i.e. “George is advised to ...” and not “I advise George to ...”

Finally, you should read what you have written, correct as necessary and cut out anything which does not make sense. You should try not to leave the examination early, and use all the time allowed, for there are still crucial marks to be gained.

The last advice that the authors of this book wish to give you is:

“DON'T BE TOO NERVOUS”

Most examiners including us in marking the examination scripts prefer to pass rather than to fail candidates.

第一階段法律考試須知

很顯然你正為參加第一階段法律考試而作準備。本部分是特為你而撰，並擬幫助你理解：

- 第一階段法律考試所要求的標準；
- 解答考題的技巧；及
- 在你學習過程中所應進行的訓練。

由下述專業團體所安排的第一階段法律考試並不容易通過：

- 特許銀行學會香港分會
- 香港公司秘書學會有限公司
- 香港會計師公會

這些考試由廣度及深度兩方面測試學生對法律內容的了解。故此只有願意有效學習並將足夠的時間與勤力用於其功課的學生，才能通過考試。

現今香港法律變化迅速。此意即對於可能作為其考試之一重要方面的新的法律資料，學生必須不斷了解。必須對你所參加之法律考試的大綱內容進行審查，以確保你為考試所準備的資料是與考試相關的，且內容是最新的。必須研習考試者報告以發現共同錯誤之所在，及獲得如何解題之指引。

考試之前，你應備製一包括溫習所有法律原則與判例及過往考題的學習計劃。你得盡力對考卷獲得“感覺”，而使自已可知道並理解考試的性質與架構。你亦應盡力記牢要求記憶的論題——本書中所提及的內容及過往考試者的報告在此方面可能對你會有幫助。

在考試當日，你應：

- 確知在何地及何時舉行考試。
- 查核你是否已帶妥所需的文具——鋼筆、鉛筆、尺子、螢光標識筆等。
- 準時到達考場。

考試開始後最初幾分鐘很關鍵，倘有計劃使用之，則可為成功通過考試打好基礎。你應將最初的 5-10 分鐘用於：

- 完全理解考卷上的指示
- 分析並挑選考題
- 分配答題的時間
- 設定答案內容

如有必答題，你應先解答之，因為該題目通常是最長及最複雜的問題，倘能盡可能地使該題目成為“你囊中之物”，則在心理上會有益處。

接着你可以解答最有把握的題目。

在解答考題時，你應盡量在有需要處引述判例與成文法。對類似“請就喬治的法律地位問題向他提供意見”這樣的問題型題目，則須以第三者的形式作答，即答案應為“可向喬治建議……”，而不是“我建議喬治……”。

最後，你應複閱你所解答的內容，並作出必要的修改及刪除不合常理的內容。你亦應盡量不要太早離開考場，而應用盡考試的所有時間，因為可能仍有決定性的考分可以獲取。筆者最後擬送給你的忠告是：

“不要過於緊張”

包括我們在內的大部分考試者在評卷時均傾向於讓應考者通過考試，而不是不能通過考試。