

**The University of Hong Kong**

**Faculty of Law Graduation Ceremony 19 November 2005**

**Speech**

This is the first time the Faculty of Law holds its own graduation ceremony. I am very pleased to have been asked by the Faculty to say a few words in this ceremony. We are here to celebrate the achievement by more than 150 students of the honour of graduating from the University with a degree in law. May I congratulate you for this achievement which marks an important milestone in your life. On this occasion, it ought to be easy for me to cast my mind some years back and think about my days as a law student at the University not too long ago, a little more than 30 years only. But the differences between the Law Department then and the Law Faculty now are so numerous and so noticeable as to leave little room for nostalgic sentiments.

For one thing, there are many more law graduates now than there were when I graduated from this University. In the 1970s, Professor Daffyd Evans gave us this warning: look carefully at the person on your left and on your right; when you graduate, at least one of you will not be here. He was referring to the high failure rate. Now, when you graduate and embark on the PCLL course, there will be one if not more persons on your left and on your right whom you have not met before. This is because the number of PCLL students is nearly twice the number of LLB graduates.

The Faculty has grown. So has the legal profession. It has grown largely in reaction to the social and economic evolution of Hong Kong. A more sophisticated society with a more complex economy calls for more lawyers. Let me give you some figures: in 1975, there were 465 qualified solicitors; in 1985, 2014; in 1995, 5483; and so far

this year, 9772; there were 95 barristers in 1975, 402 in 1985, 670 in 1995, and up to 5 November this year, 1042. About 38% of all qualified solicitors do not obtain a practising certificate. On the other hand, only 10% of barristers do not obtain a practicing certificate. For whatever reasons, they are not in private practice.

As the legal profession grows in numbers, competition both within and outside the profession becomes more intense. That in turn gives rise to a tendency towards parity in terms of average incomes among lawyers and between lawyers and others. For many, to put it in very crude terms, business is not as good as it used to be.

There is another concern for those who are worried about the future of our lawyers. Investment in human capital by way of post-graduate studies and training has become quite common and is not confined to such professions as law, medicine and accounting. In a wide range of fields, more working people enroll in training courses and study for further qualifications in order to seek advancement in their career, to enhance their job performance, and to add value to the service they provide. Lawyers no longer have so great an advantage as before over people in other professions in terms of investment in education and training.

What then is there for our young lawyers and young graduates? Can they continue to flourish like those before them or worse still can they even survive? What should they do to flourish or to survive?

Two things come to mind: first, opportunities; and second, professional standard. Opportunities are what you expect to get; professional standard is what the public expect to get from you.

Some law graduates among you may not continue with their legal studies and have plans to attain qualifications of other disciplines. A great variety of post-graduate training and post-graduate qualifications has become available to university graduates, including law graduates, especially those of you who are holders of a double-degree. That should not be surprising given the social and economic changes in our society. Some law graduates may wish to go into other professions such as banking or journalism. It would be assuring to know that there are bank managers who know as much about undue influence, or newspaper editors who know as much about defamation, as our law graduates even without involvement in litigation on those issues. This is not a bad thing. I, for one, would be glad if some law graduates can bring what they have learned at university to bear on fields outside the practice of law. Your legal knowledge and such skills as you have acquired through analyzing and applying legal principles to fact patterns will, I am sure, stand you in good stead in many non-legal fields of work.

But to the majority of the law graduates gathered here today, the availability of a wider choice of jobs outside the legal profession does not matter very much. I suppose most of you were set on becoming lawyers and turning legal knowledge into practice before you applied to study law. I suppose most of you have not changed your mind. You will go through the PCLL course and after that, traineeship or pupillage probably because you think that this is the natural way to add the most value to the skills and knowledge you have acquired as undergraduates studying law.

Your talents, I can assure you, will not be wasted. Qualified lawyers have a wide career choice. As the public are more aware of their rights, the demand for lawyers to

provide them with legal service has also increased. Besides practising law in the private sector, some lawyers may like to work in the government. Or they may become judges. But these familiar public sectors are showing little growth. Some may go into politics. If the recent proposals on political reform can become reality, there is plenty of room for lawyers to serve the community in the political arena with their legal knowledge. But in politics of course they have to compete with people of all walks of life with different qualifications and expertise. I am informed that there is a growing demand for in-house lawyers. Big companies and commercial enterprises are keener than before to recruit qualified lawyers to advise them before turning to private practitioners for the necessary legal documentation or litigation. But this is rather difficult to confirm, as there is no official register for in-house lawyers.

Apart from these choices, new opportunities arise and await lawyers. Let me just mention a few.

You must have heard or read something about the opportunities that CEPA offers. Under CEPA, Hong Kong law firms may set up representative offices and enter into co-operation agreements with Mainland law firms or operate in association with them. Hong Kong law firms may have priority in handling certain classes of foreign-related legal matter and may share resources with its Mainland counterparts and provide mutual support while keeping their separate legal status. In general, CEPA shortens or even removes completely the minimum residency requirement for Hong Kong representatives stationed in their Mainland representative offices.

Apart from that, it is projected that a growing number of Mainland businesses are going to raise funds in Hong Kong, set up companies in Hong Kong, or become listed

and issue shares in Hong Kong. They are going to need the services of Hong Kong lawyers. Their services will also be needed by international enterprises with plans to do business in the Mainland. The multi-lingual background of most Hong Kong lawyers as most of you will be is a clear advantage.

But to cash in on such cross-border practices, Hong Kong lawyers must have a good idea of the changing conditions in the Mainland, and a sufficiently sound understanding of the developing Chinese law. One way of doing this is to study Chinese law and get qualified to practise law in the Mainland. Under CEPA, Hong Kong permanent residents of Chinese nationality may sit the Mainland legal qualifying examination. But such examination is, I am told, much more challenging than the PCLL examination. Its current pass rate is only about 7 %!

In a sense, CEPA gives substance to Hong Kong lawyers' expectation of opportunities to extend their business into the Mainland market, which has arisen as a result of China's accession to the WTO. I understand the Faculty of Law regards WTO and international economic law as one of its recent areas of development which "is rapidly gaining momentum". The Faculty may be able to do more in future to prepare law students for cross-border practices.

Another type of new opportunities for lawyers is connected with high technology or new technology. Legal services are often required in connection with the protection of intellectual property rights or electronic transactions through the Internet. However, the solutions to problems brought about by high technology or new technology are seldom purely legal in nature. Often you have to look to technology itself for solutions. I think I can safely say that lawyers will always have a part to play in

providing solutions to some of the problems that are caused by technological innovation.

Opportunities as those just mentioned are plenty, but do not affect all legal practitioners to the same extent. The lawyers who are more likely to benefit from new opportunities are the ones who are enterprising, adaptive, capable of mastering specialized knowledge, and willing to explore grounds not trodden by many others before. A great proportion of those who answer to this description are lawyers who are as young as many of you will be when you qualify in a few years' time.

What is today new career opportunities will become established areas of practice. It is impossible to make predictions about opportunities that will arise in future. But I believe as long as Hong Kong is developing in the direction of a knowledge-based, market-oriented economy, opportunities will emerge for future generations of Hong Kong lawyers. It is perhaps not too speculative to think that social, political and economic changes will cause changes in the roles that lawyers play partly as result of their response to new opportunities. My advice is: prepare yourselves now so that you can take advantage of these opportunities when they come and meet these challenges when they arise. But how do we prepare ourselves for that?

Against the dynamic background of an evolving society, it is sometimes easy to overstress the need for lawyers to be responsive to changes but neglect the professional standard necessary to meet new challenges. There are certain aspects of legal practice which the legal profession is right to be conservative about because they are essential to a satisfying and rewarding legal practice. These essential aspects include professional competence and professional ethics.

However drastically the world has changed, the lay public still expect lawyers to be competent. They expect lawyers to act in the best interest of their clients, that is, to do everything possible within legal confines to champion their clients' causes and to protect their clients' rights. Competence is better defined and more easily judged in established areas of practice than in new areas. In areas where the law is well settled, whether you are competent depends on how familiar you are with the relevant law and how skillful you are in applying the law to clients' problems. There are authoritative books you can refer to and abundant precedents you can rely on.

As society is changing and changing rapidly, there are areas in which new legal problems emerge. Where the law is not settled, competence is something different. There are bound to be new areas where not much law has been enacted for its regulation or where the effect of the relevant law has not been tested in the court. You will have few if any decided cases to go upon and no classic text to learn from. To gain competence, you must learn more about the subject. You must be able to research thoroughly into it. And you must have the ability to interpret the relevant law, if any, logically, judiciously and to a certain extent imaginatively. Imagination is sometimes relevant because analogy to the application of some settled law may exist that will help interpret the new law. Only lawyers with imagination can spot such an analogy and see if any existing law is applicable to it. This is how you build up your confidence, gain your experience and acquire your expertise.

To a typical lay client, whatever the nature of her case may be, her lawyer is the expert in law. It is therefore important to have your client's trust. Only a client who trusts a lawyer will tell the lawyer everything that is needed for her to give the most

practical legal advice. It is impossible to act for a client who questions your advice or even worse, your motive for giving the advice. But I believe that mistrustful clients are not common. It is usually not difficult to gain their trust if you are competent, but only if you are competent. I also believe that having gained your clients' trust, you have to work much harder to deserve and keep that trust than to gain it in the first place. If you can remind yourself of that from time to time, mistrustful clients would be even less common.

The trust a client places in her lawyer depends on how well the lawyer discharges her professional duty. Evidently there is an ethical dimension to it. As PCLL students, you will learn, for instance, how a lawyer's duty to her client is qualified by and subordinated to her duty as an officer of the court. The legal profession is very concerned about the standards of compliance with professional ethics. One reason is that the misconduct on the part of an individual practitioner is a taint on the whole profession and is liable to bring it into disrepute. The public tends to judge the legal profession by isolated instances of lawyers' conduct or misconduct. Once a lay person's trust in one lawyer is breached, she is much less ready to trust another lawyer again because she has lost her confidence in the legal profession as a whole. That may be unfair to other lawyers. It may also be detrimental to our legal system. But unfortunately, this is very often the way lawyers are commonly judged by the public. You must constantly be alert to the importance of professional ethics. If a lawyer, however learned she is in the law, fails to comply with the rules of professional ethics, then she cannot be a good lawyer; in some instances, she does not even deserve to be called a lawyer.

Lay people do not know very much about the legal profession. Much less do they know about professional ethics. They may expect their lawyers to follow their instructions to the full and win cases for them, irrespective of the merits of their cases or to do what they want, whatever the legal position is. Lawyers may find it necessary sometimes to tell their lay clients something about what lawyers can do and what they cannot do. They should advise their clients frankly and honestly and as best as they can, even to their clients' possible disappointment or annoyance. They must first of all abide by the law. They must also observe the rules of ethics laid down by the legal profession for its members. They must conform to the public's perception of how lawyers should conduct themselves. That is the public's expectation of our lawyers. If you live up to it, you will gain the respect of others and inspire greater public confidence in the law.

You cannot expect opportunities to come if you do not maintain a high standard of professional competence and professional ethics expected of you by the public. If you meet the public's expectations, opportunities will come and your own expectations will be fulfilled; on the other hand, if you do not, even when opportunities come, you will not be able to benefit from them.

Thomas More in his book of Utopia describes an ideal country whose people exclude and banish all lawyers (but I am glad to say, not judges) because they think lawyers "craftily handle matters, and subtly dispute the laws" and prevent the truth from coming to light sooner. Thomas More himself was a successful lawyer known and highly respected for his honesty and integrity. But he lived in a time when professional ethics received much less emphasis among legal practitioners than it does

now. In any case, Thomas More was describing an imaginary world whose people were so religious and virtuous that few laws were needed.

In our own imperfect but pluralistic world, there will always be a steady demand for people who are versed in law and who practise law competently and ethically. Fresh law graduates have to spend time after graduation on cultivating various social and business skills. Some may have to turn to new channels for work. But so long as you keep an interest in human affairs, open your minds to new possibilities, and prize your honesty and integrity, you will find yourselves in roles which are rewarding both materially and spiritually and which are of value to society.

Finally, I would like to congratulate all of you again on your wonderful achievements.

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