

Cross-Border



Fast Facts:

England, Australia, and Hong Kong all divide their legal profession into solicitors and barristers.

There is no bar examination in Australia, only education and experience requirements.

Hong Kong has a residency requirement.

Admissions Process for American Lawyers in England, Australia, and Hong Kong

The idea of living and practicing law overseas can be an attractive one, but it sounds hopelessly impractical. No one in his or her right mind wants to go back to law school or take bar exams again. A surprise is in store; it has become increasingly easy, as well as common, for lawyers to be licensed to practice in foreign jurisdictions.

Canada, our nearest neighbor, has erected an effective barrier to cross-border licensure, requiring Canadian citizenship or permanent resident status. However, England, Australia, and France, as well as many other nations, have established fast-track procedures for admitting foreigners to practice in their respective jurisdictions. Space limitations preclude an exhaustive review of the requirements in a large number of jurisdictions, but this article details the admissions process for American lawyers in England, Australia, and Hong Kong. Further, a candidate in these jurisdictions does not face a language barrier and the process is simplified for a lawyer with prior training in the common law.

ADMISSION IN ENGLAND

There can be little doubt that, for the American lawyer, the process of becoming licensed in England is far easier than the transfer license process for any other jurisdiction. This is true for a number of reasons. Perhaps the most important, and most obvious, is language. Second, England is a common law jurisdiction; hence English lawyers approach problems in a fashion similar to their American counterparts. Third, the process and requirements are far from onerous. That being said, however, it is essential to remember that England has a distinctly different legal system. One of the most notable differences is that the legal profession is divided into solicitors and barristers.

The solicitors are, by far, the larger of the two professional groups. They do almost everything that we normally associate with “lawyer’s work” except in-court advocacy in front of the higher courts and the presentation of appellate cases. Solicitors and barristers are not permitted to work together as a law firm. Solicitors’ offices and barristers’ chambers are always completely separate and distinct. Barristers are not hired by the client. The client retains a solicitor and when the services of a barrister are necessary, the solicitor retains a barrister to argue the case.

Transfer admission as a barrister is done through the Bar Council. However, at the practical level, given the ethical constraints of the barrister’s profession and the serious difficulties of establishing a practice, it would be almost pointless for an American lawyer to obtain a professional qualification as a barrister unless he or she intends to relocate to England and practice full time as a barrister.

The Law Society of England and Wales oversees the admission of overseas lawyers wishing to become solicitors. Those of us who have endured the Byzantine complexities of a state bar admission process and the burdensome details of the National Board of Law Examiners forms will be pleasantly surprised by the simplicity of applying for admission to the law society.¹

Admission follows a three-step process. The first step, making an application, is quite straightforward. The law society has a short form, consisting of 24 questions, providing contact details, educational background, professional experience, contact details for three professional references, copies of college and law school diplomas, and state law license. In this process, you must satisfy the society that:

- you have graduated from law school;
- you hold a license to practice law;
- you have actively practiced law for at least two years;

- you have not been in bankruptcy or convicted of a crime; and
- you have not previously been disbarred or subject to professional discipline.²

If you meet the criteria, you will receive a certificate of eligibility and a letter telling you which examinations you must pass. The second, and more burdensome, step in the process is the admission examinations. If you went to law school in a common law jurisdiction and speak English fluently, you will be required to take three examinations:

- Property
- Litigation (civil or criminal procedure)
- Professional Conduct and Solicitor's Accounts

These examinations do not come close to the difficulty of an American bar examination. The property examination requires you to know the steps involved in a real estate closing in England. While it is a more complicated procedure than a closing in the United States, it is not difficult to master. The litigation examination requires you to know the basic steps in either English criminal or civil litigation. Criminal cases proceed somewhat differently in England than America but civil procedure looks remarkably the same. The third examination, professional conduct and solicitor's accounts, poses fewer difficulties. The English rules of professional conduct and the American rules are virtually identical. The portion of the exam devoted to solicitor's accounts requires the basics of double-entry bookkeeping and readily distinguishing the solicitor's funds from your client's.

Clearly, you will not pass these examinations without any preparation. There are four schools that provide short courses (about 60 hours) designed specifically to prepare applicants for these examinations, and one school that provides correspondence courses. Alternatively, you can elect to purchase the written materials, which include prior examination questions and answers and practice tests. The core materials are not voluminous (a few hundred pages) and provide you with everything you need to pass the examinations.

The examinations are not given by the law society but by the same providers who offer the preparation courses. You do not have to take the classes or buy the materials from the provider in order to sit for the exam with them, although you will have to pay a reasonable examination fee. While the exams generally are given in London, in the past they have been offered in New York and Toronto.

Each exam topic consists of a three-hour essay exam and you must score at least 50 percent overall to pass. You may repeat one exam without retaking the others and you may take them one at a time. The pass rate on these examinations approaches 90 percent, and this includes examinees whose native language is not English and whose law school training was in non-common law systems. In short, with a reasonable degree of preparation, the exams are not difficult.

The final step is pro forma and consists of the submission of the exam results and your actual admission to the law society.

ADMISSION IN AUSTRALIA

Australia, like the United States, has a federal system of government and law licensure is regulated by the individual states rather than the national government. The procedure in place in the Australian state of New South Wales is typical and quite similar to the admissions process in England. However, rather than a completely separate track for the admission of foreign lawyers, the external lawyer is admitted under the same standards and procedures as a novice domestic lawyer but with a system of exemptions from various requirements. Like England, New South Wales has both solicitors and barristers. The requirements for admission as a solicitor follow.³

A person seeking to qualify as a solicitor in New South Wales must meet certain educational and experience requirements. For a domestic applicant, they must either graduate from an Australian law school or independently pass a series of examinations on various legal topics such as contracts and torts given through the Legal Practitioners Admission Board. An American applicant who attended law school in the United States can readily obtain an exemption for most of the educational requirements.

The second requirement is that of practical training. An Australian law student, after completing school, is required to have a period of on-the-job training with a law firm. This period of "articles" or apprenticeship normally lasts several years. An American lawyer with at least five years of general practice experience will normally receive a complete exemption from this requirement as well.

It is important to bear in mind that the education and experience requirements are not prerequisites to take a bar examination. New South Wales does not have a bar examination; meeting the education and experience requirements is sufficient.

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An American lawyer with the training and experience suggested above would take the following steps to become admitted in New South Wales. First, apply to the board for academic exemptions by furnishing

the board with U.S. law school transcripts and asking them to make a formal determination whether any further course work is required. For U.S. applicants, usually all academic requirements except real property and Australian constitutional law are exempted.

The real property and constitutional courses could be taken in Australia, by correspondence, or by online distance education on the Internet. The University of New England in Armidale, New South Wales offers such a program.⁴ The courses can be taken sequentially or simultaneously. After course completion, you will again communicate with the board to obtain approval for having satisfied the remaining academic requirements.

While taking these courses, you will also want to file with the board to obtain exemption from the practical training requirement. If you can show that you have had at least five years of general practice, you will be exempted from the training requirement.

With the academic and training exemptions in hand, you would then file the formal application, with supporting documents, with the board to obtain actual admission to practice as a solicitor in New South Wales.

HONG KONG

Admission in Hong Kong more closely resembles the process in England than Australia. Like England and Australia, the profession in Hong Kong is divided into solicitors and barristers. This article will focus on the admission process for solicitors.

In Hong Kong, like England, there is a system in place specifically designed for the admission of foreign lawyers as solicitors. This system is administered by the Hong Kong Law Society.⁵ The threshold requirements for admission as an overseas lawyer are minimal; there is no express educational requirement, but you must be admitted to practice in another jurisdiction and have practiced for a minimum of two years.

A lawyer applying from a common law jurisdiction is required to pass up to four examinations:

- Conveyancing and Landlord and Tenant
- Civil and Criminal Procedure
- Commercial and Company Law
- Accounts and Professional Conduct

However, lawyers who have a minimum of five years of experience are automatically exempt from the Civil and Criminal Procedure examination and are eligible to apply for examination waivers from Commercial and Company Law and Accounts and Professional Conduct. Due to the unusual nature of land law in Hong Kong, only those having significant experience in dealing with real estate in Hong Kong are eligible for a waiver of the real property examination.

Filing the Overseas Lawyer Qualification Application Form begins the process, with a letter requesting exemptions for which you may be entitled, supporting documentation showing your domestic licensure, length of practice experience, and such evidence as would support your request for exemptions, together with the application fee. The Department of Standards and Development of the Hong Kong Law Society will evaluate your application and advise you regarding which examinations you must take.

The second step is to prepare to take the examinations. There are two accredited preparatory course providers who offer both classroom instruction or distance learning programs: Info-Cite/LexisNexis Butterworths⁶ and the School of Professional and Continuing Education.

The third step is to actually sit for the examinations, after submitting an application for examinations to the law society and pay-

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ing the examination fee, based on the number of exams. The exams are given only in Hong Kong. The various exams are offered within a few days of each other and each exam lasts 3½ hours. The overall pass rate for the exams ranges from 50 percent to 70 percent and the pass rate on

the exams that an experienced American lawyer would most apt to be required to take (property and ethics) are around 70 percent.

When a candidate passes the required exams, he or she can apply for admission as a solicitor. Aside from a simple formal application form and the fee, there is also a residency requirement that can be satisfied by:

- residing in Hong Kong 90 days prior to admission
- residing in Hong Kong 90 days after admission
- being ordinarily a resident of Hong Kong

For the foreign lawyer not already based in Hong Kong, this residency requirement may be the most burdensome of the requirements, but it should not be viewed as an insurmountable barrier. There is a large legal and academic community in Hong Kong and anyone taking the trouble to obtain licensure there would normally have an interest in working, studying, or teaching there for at least a short period of time.

CONCLUSION

Undoubtedly, cross-border licensure is a more difficult process than the reciprocal licensure process between the states and it involves a commitment of both time and money. However, when compared to other specialized training, such as an LLM or a judicial clerkship, it is probably less demanding and potentially more rewarding. It not only makes you stand out from other persons in a law firm and allows you to make a unique contribution to the firm, it also opens the doors to possibilities and adventures that you may have never imagined. ♦

Mark Stevens is a Michigan attorney who is licensed to practice in Michigan, New York, England, and Wales. He presently resides in London and teaches American law to lawyers in the United Kingdom.

FOOTNOTES

1. For further information see www.lawsociety.org.uk.
2. A criminal conviction, bankruptcy, or prior professional discipline are not absolute bars to admission but will result in a heightened level of scrutiny of the application.
3. For further information see www.nsw.gov.au/lpab.nsf/osprac.
4. For further information see www.une.edu.au/febl/.
5. For further information see www.hk.lawsoc.org.hk.
6. For further information see www.infocite.com.hk.