

EDUCATION AND TRAINING

Pupillage

At its most recent meeting the Council of the Institute considered the importance of pupillage in the education and training of arbitrators.

Pupillage is a system under which a pupil or person aspiring to be an arbitrator is attached to a "master" or experienced arbitrator with the view to increasing his knowledge by observing arbitrations and otherwise taking instruction from the master.

The Council of the Institute places great importance on the value of pupillage. In this connection it has been decided that—

1. the periodic review of Grade 1 arbitrators will in future require arbitrators to give details of their activities as "pupil masters" since the last review; and
2. all applicants for initial grading or regarding will in future be required to furnish details of pupillage undertaken.

In the light of the above policy statement Grade 2 and Grade 3 arbitrators and those who as yet are ungraded but aspire to be should, if they have not already done so, seek out a Grade 1 arbitrator in their area of expertise with the view to establishing a pupil-master relationship.

Grade 1 arbitrators who have not taken pupils in the past must now seriously consider this matter, bearing in mind that their activities, or lack of same, in this area will come under scrutiny at future reviews of their grading.

All pupils and pupil masters alike should now commence keeping records of their pupillage activities in order that details will be readily available when required in future.

EDUCATION TRAINING AND GRADING OF ARBITRATORS

For the information of members of the Institute and, more specifically, those seeking to be graded and practise as Arbitrators we reprint below a portion of the President's Message to Members published in the May 1988 issue of *The Arbitrator*.

The importance of your Institute's courses, members' own preparation, your Institute's examination and grading, are all emphasised by one recent enquiry to The Institute's Chief Administrative Officer. Because of its importance, I think it is valuable to set it out virtually in full but omitting formal parts:

"In response to the specific matters raised by you I advise as follows:

1. Yes, the pass mark is 50%.
2. The pass mark applies to all candidates. We do not have a higher pass mark for, say, lawyers and a lower passmark, say, for building consultants.
3. Following the initial marking of the papers by the examiners each candidate's answers are independently reviewed by another examiner to ensure uniformity of marking and that, in borderline cases, the candidate is allocated the correct marks.
4. The examination is not a speed test. It is a test of a candidate's ability to come to grips with problems and issues in particular situations, to assess a position, arrive at decisions and express himself in a written answer. To do all this obviously a candidate's knowledge of arbitration law, practice and procedures is tested.

I think it is fair to say that any candidate who expected to pass on "general arbitration knowledge" (to use your words) will most probably fail and perhaps fail quite badly.

Regarding the reports of examiners, I would stress that they are Examiners' Comments only; they are not Model Answers. The reason for this is that in considering a particular question the facts may indicate alternative answers. The candidate must canvass all alternatives in his answer, make a decision and give a reason. This is what arbitrators are continually doing in their daily professional work as arbitrators.

Examiners prefer short factual answers—no padding—sufficient to show that the candidates understand the question and knows the principles and practice involved in their answers. A well thought out three paragraph answer may well score higher marks than a three page essay. Quality in answers is what is looked for, not quantity.

If a candidate is able to quote a case all the better. If he cannot but indicates he knows the principles and practice involved he will score just as many marks. The examination is not a memory test of case names.

A partly answered question will normally score some marks. A question which is not attempted will not score any marks at all.

This year the May Journal will contain as an insert the full text of the examination paper and examiners' comments (not model answers) on candidates' answers. In the past other examiners' comments have not always been available for all questions for good reasons and this of course is regretted.

There is a time delay between sitting the examination and the publication of results. This year over 50 members entered for the examination. The examiners are practising arbitrators or involved in arbitration work who mark the papers at weekends and in their spare time. They are not full time paid academics who have nothing else to do but mark candidates' answers. I would like to assure you that the marking of the papers and publishing of the results is carried out as quickly as possible.

It is not Institute policy to divulge marks to candidates, provide comments to individual candidates on their performance or lack of it, or return corrected papers to them.

The examination is part of a structured Institute programme leading members through two courses and an examination as a prerequisite to grading or re-grading. It is part of The Institute's quality control activities. The Institute sets a high standard. The users of arbitration are demanding quality arbitrators and the courts through their decisions are signalling to The Institute and its members that they will deal firmly with those who exhibit lack of knowledge in their arbitrations. Likewise the courts have shown that they will fully support arbitrators who act professionally and conduct their arbitrations in accordance with the law and accepted practice."

EXAMINATION RESULTS

The Council of the Institute has decided that members who sit for the arbitration grading examination be advised their examination results using the following classifications:

Merit	75% plus
Credit	60% to 74% inclusive
Pass	50% to 59% inclusive
Marginal fail	45% to 49% inclusive
Fail	0% to 44% inclusive

Results of the 1989 examinations were advised to candidates using the above classification.

In previous years candidates were only advised whether they had passed or failed as the case may have been.

EXAMINATIONS, EDUCATION AND TRAINING

SYLLABUS AND POLICY STATEMENT:

To assist all members, the Institute's policy statement, including syllabus, is set out hereunder:

SITUATION

Among the principal objects of the Institute are:—

- (a) promotion of the study of practice and law relating to arbitration;
- (b) to provide means for training and testing the qualifications for membership of the Institute; and
- (c) (impliedly) to improve standards.

The Institute's articles of association expressly provide for the Council to conduct examinations to test the qualifications of its members.

The policy statement on grading specifies qualifications and, more particularly, those to be assessed by:—

- (a) examination;
- (b) schools and seminars; and
- (c) interview.

The policy statement expressly charges the Council with the responsibility for preparing and maintaining assessments and examinations.

—SYLLABUS.

- I. Procedures and practice;
- II. Principles; and
- III. Law,

all relating to commercial arbitration and, for example, in respect of the following subjects:—

1. elements of contract law;
2. the arbitration agreement, notices of dispute and other references to arbitration;
3. staying court proceedings brought in the face of arbitration;
4. the preliminary conference;
5. pleadings;
6. evidence;
7. the hearing;
8. determination of preliminary point of law by the court;
9. the award;
10. costs and fees;
11. setting aside the award and remission of the award; and
12. enforcement of the award.

—SUGGESTED READING:—

Commercial Arbitration Act, together with any relevant legislation or rules, in your State or Territory;
Institute Practice Notes;
Selective papers from Institute courses and the Journal;
Sharkey & Dorter—Commercial Arbitration; The Law Book Company Limited;
Commercial Arbitration in the Australian Construction Industry—Ronald Fitch, The Federation Press;
Russell on Arbitration; Ed. 20; Stevens & Sons Limited—The Law Book Company Limited; Paris, Arbitration—Principles and Practice (1983)—Granada Publishing;
Mustill & Boyd—Commercial Arbitration (Butterworths).

NATIONAL COURSES.

1. The emphasis is on the national aspect of the courses.
2. The general course is not by any means of the introductory level but rather of a standard high enough for those who do not quite qualify for the advanced course.
3. Accordingly Chapters are encouraged to conduct their own introductory courses, seminars etc.
4. The advanced course is sometimes under-estimated. Accordingly those seeking to register for it should first have attended a general course.
5. Being national courses, the general and advanced course have to be approved in advance as to both:—
 - (a) syllabus;
 - (b) proposed speakers,by the Council, Executive Committee or Education Committee.

INSTITUTE EXAMINATIONS

Members are reminded that examinations are conducted once annually for the purpose of examining candidates seeking admission to the Institute's grading lists.

The date of the examination is the *third Monday of February* each year.

The examination is a "closed book" examination i.e. candidates may not take any notes or reference materials into the examination. Upon entering the examination room each candidate will be handed a "clean" copy of the local State/Territory Commercial Arbitration Act or Ordinance for use in the examination.

A pre-requisite for admission to the examination is the completion of both the Institute's General Residential Arbitration and Advanced Residential Arbitration courses.

A list of suggested reading is published by the Institute in each journal issue for the benefit of students. (see above)

Further information and past papers may be obtained from your local Chapter Secretariat or Chief Administrative Officer, The Institute of Arbitrators Australia, 6th Floor, Building B, World Trade Centre, Melbourne, Vic. 3005. Tel. (03) 6143891.