

Interpreting the Results of Japan's first National Legal Examination for the New Postgraduate "Law School" Programs

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ANJeL members and others following the bewildering breadth and varying depth of changes to Japanese law and society since the late 1990s are probably aware of the new postgraduate "Law School" programs superimposed on existing undergraduate and more research-oriented postgraduate programs since 2004.² Most existing law faculties applied for, and received, accreditation for such programs. The major attraction for around 6000 students now enrolled in the Law Schools was the expectation that the extra years of study, in smaller groups taught by professors with more experience in practice, would generate a 70-80 percent pass rate in a revamped National Legal Examination (*shiho shiken*). The nationwide uniform Exam had been extremely difficult to pass, in order to pursue further training and a career as a practicing lawyer (*bengoshi*), public prosecutor or judge. As part of wide-ranging reforms to civil and criminal justice particularly since 2001, policy makers had agreed gradually to raise the number of passers to 3000 per annum by 2010. This July, over 2000 Law School students sat the first revamped Exam and 1009 passed, generating an overall pass rate of only 48 percent.³ The Appendix reveals some interesting variance among the new Law Schools, which has generated considerable discussion. However, this preliminary analysis suggests that it is still too early to draw many firm conclusions, let alone implications particularly for organizations like ANJeL partly or completely based outside Japan.

Several caveats must be made before embarking on any analysis of the new Exam results. First, another 542 passed the "old-style" Exam (*kyu-shiho shiken*), although that is being steadily phased out. Those sitting that Exam do not need to go through the Law Schools, and ironically the pass rate (out of 3717 applicants) was 62.7% - higher than that for the new Exam for Law School students. To improve their chances in the old-style Exam,

¹ ANJeL Co-Director. Many thanks to Co-Directors Kent Anderson and Leon Wolff, Executive Coordinator Hitoshi Nasu, Mark Levin and Stacey Steele. But the usual disclaimer applies with special force: they are not responsible for any errors of fact or interpretation. However, the ANJeL Executive is working on a more comprehensive and detailed analysis, and warmly welcomes feedback: <anjel@law.usyd.edu.au>.

² See eg special issue No 20 of the *Journal of Japanese Law*, at <http://law.anu.edu.au/anjel/content/anjel_research_pap.htm>.

³ Extensive data is available (in Japanese) on the Ministry of Justice's website, <<http://www.moj.go.jp/SHIKEN/index.html>>.

many continue to go to cram schools (*juku*), a phenomenon that provided one impetus for creating the Law Schools. However, the following universities that achieved significant numbers of passers in this year's "old" Exam may claim that they performed well or at least better overall, when these numbers are combined with passers from this year's new Exam for Law School students.⁴ (After all, many of the Law School professors also still teach in the undergraduate law faculties.)

University	Passers of old-style Exam	Last year
Tokyo	92	226
Waseda	79	228
Keio	55	128
Kyoto	44	120
Chuo	44	118
Doshisha	16	50
Jochi (Sophia)	16	25
Meiji	15	29
Hitotsubashi	14	50
Hokkaido	13	30
Osaka	12	57
Kansai	10	23

For example, only 35 students from Doshisha Law School passed the new Exam, but 16 passed the old-style Exam, so overall the university can claim 51 passers compared to 50 (all under the old-style Exam) last year. Likewise, Sophia had 33 (17+16) passers overall this year, compared to only 25 last year.

Second, the sample of those sitting and passing the first Exam for Law School students is small relative to the total number of Law School students. Law Schools can admit students into two-year programs (if they have already studied undergraduate law, hence known as *kishusha*) or into three-year programs (aimed at those who haven't yet studied law, *mishusha*). Because this was the first revamped Examination since the Law Schools got underway two years ago in 2004, only the *kikusha* sat it this time. Most Law Schools enrolled more *kikusha* than *mishusha*. However, for example, Waseda University ended up with mostly *mishusha*, so only 19 sat this year's Examination (with 12 passing, a 63% pass rate). It is particularly difficult to extrapolate from such circumstances how the first batch of *mishusha* will fare in next year's Examination. In addition, some Law Schools have enrolled students as *mishusha* even though they have already studied law, so they might do

⁴ The full list is available at <www.moj.go.jp/PRESS/061006-1/18ron-univ.html>.

especially well next year.

Third, the data only covers those who applied for and sat the Exam, not the numbers who were enrolled in the two-year programs. Presumably, most of those completing these two years applied to sit the Examination (although some ended up not actually sitting it). However, it would be interesting to check how many decided not even to apply, and even how many dropped out of the Law School programs over the first two years.

Fourth, closer analysis is needed of Exam performance in the first multi-choice part compared to the second essay part. Students from some Law Schools (such as Hiroshima and Kansai Unis) did better than average in the former but generally bombed out in the latter, leading to below-average overall pass rates. Now that this problem has been identified, it may be more readily rectified from next year.

Fifth, some Law Schools had hardly any students sitting the Exam. A high pass rate then means rather little, although all credit to the brave solitary soul who sat and passed the Exam from the remote Shimane University, meaning its tiny Law School was the only one to obtain a 100 percent pass rate! Conversely, the many Law Schools that achieved below-average pass rates can – and, no doubt, will – point to the very low numbers that sat this year’s Exam from those Schools anyway.

Nonetheless, from the numbers of examinees and the pass rates recorded commentators have tended to perceive some “winners” and “losers”. The clear “winners” are thought to be those Law Schools that achieved both high pass rates and high absolute numbers of passers: Kyoto, Keio, Chuo, and Tokyo. Other winners are thought to be those who scored pass rates well above average (Aichi, Osaka City, Hokkaido), especially those that achieved quite a few passers in absolute numbers as well (Hitotsubashi, Kobe). Those that achieved quite a few passers, but at below-average rates, are at risk of being considered “losers”: Kansai, Kwansei Gakuin, Doshisha, Ritsumeikan (collectively known as “*Kan Kan Do Ritsu*”) and Sophia. Meiji University achieved 43 passers and a 45 percent rate, putting it on the borderline with a large group of Law Schools with around average pass rates. Law Schools with both low numbers and low pass rates, as in many small regional universities, are likely to come under pressure in the impending round of re-accreditation.

Challenges for smaller regional Law Schools had been widely anticipated. More surprising was the disappointing results for *Kan Kan Do Ritsu*, the leading private universities in the Kansai area. Concerns voiced a few years ago that good professors and students had been lured away to the bigger Law Schools in Tokyo may have been quite justified:

Tokyo Area	602
Other Area	407
Total Passers	1009

(Thanks to Mark Levin for this breakdown, and for the next two Tables)

Another concern, that private universities would tend to be undercut by public universities (better able to cross-subsidise and the like), may also be borne out more generally – strong performances from Chuo and Keio being exceptions:

Public Universities	697	441	63%
National	632	406	64%
Metropolitan	39	17	44%
City	26	18	69%
Private Universities	1390	568	41%

Even more surprising was the better Exam results achieved by traditionally lower-ranked universities compared to their local counterparts, for example in Osaka (Osaka City Uni 69% > Osaka Uni 48%), Nagoya (Aichi Uni 72% > Nagoya Uni 61%), Fukuoka (Fukuoka Uni 60% > Kyushu Uni 54%), and even Tokyo (Hitotsubashi 83% > Tokyo Uni 71%). As Mark Levin (U Hawai'i) put it in private correspondence, this is like Avis car rentals' slogan in the US: "We're Number 2 – We try harder"! Nonetheless, overall the pass rate remained significantly higher for the so-called “elite” universities (ex-Imperial universities such as Tokyo and Kyushu, plus Hitotsubashi, the six major private universities in Tokyo along with Chuo, and *Kan Kwan Do Ritsu*):

Elites	1393	759	54%
Non-Elites	694	250	36%

Whether such generalizations prevail, however, may be tested by tracking how enrolments continue for these various Law Schools. Applicants may feel it is too early to give up on certain Schools, although the latter may have to change their marketing. Those that did less well than expected this year might reduce fees or offer more scholarships. Others may undertake surveys to see how their graduates did in finding jobs (*shusboku katsudo*) – either before the Exam results were made public (as was quite common), or afterwards – despite ultimately not having passed the Exam. If they still embarked on promising careers, for example in more or less law-related jobs within “good” companies, then this could still be a selling point for the Law Schools.

Nonetheless, there is a real risk that a few more years of “bad” Exam results will lead to another round of jockeying for position among universities at all levels. This would be unfortunate since the *tatema* (façade) was always that the Law Schools were not just supposed to be uniformly churning out robots able to pass one big Exam, like the *juku* ended up doing quite successfully for the old Exam. Instead, the new Law Schools were encouraged to pursue independently their visions and niche markets for training legal professionals in a broader sense, able to embark on a variety of law-related careers. Ironically, the age and gender profiles of those who passed this year’s first new-style Exam for Law Schools was very similar to those under the old system, undercutting hopes for a more diverse generation of legal professionals. In addition, it is Law Schools with commitments to such a vision that tend also to appeal to organizations and people outside Japan. Although a few such Schools may also be able to do well in preparing their students more narrowly for the Exam, the contours of that bottleneck continue to cast a deep shadow over most universities and the legal system generally in Japan.

Appendix

法科大学院名	Law School	最終合			
		出願者数 Number of Applicants	受験者数 Number of examinees	合格者数 Number Pass of passes	格者数 Rate
愛知大学法科大学院	Aichi University	19	18	13	72%
青山学院大学法科大学院	Aoyama Gakuin University	14	14	5	36%
大阪市立大学法科大学院	Osaka City University	27	26	18	69%
大阪大学法科大学院	Osaka University	21	21	10	48%
岡山大学法科大学院	Okayama University	12	12	4	33%
学習院大学法科大学院	Gakushuin University	49	49	15	31%
神奈川大学法科大学院	Kanagawa University	15	13	4	31%
金沢大学法科大学院	Kanazawa University	2	2	1	50%
関西大学法科大学院	Kansai University	51	50	18	36%
関西学院大学法科大学院	Kwansei Gakuin University	65	64	28	44%
関東学院大学法科大学院	Kanto Gakuin University	17	15	1	7%
九州大学法科大学院	Kyushu University	13	13	7	54%
京都産業大学法科大学院	Kyoto Sangyo University	2	1	0	0%
京都大学法科大学院	Kyoto University	130	129	87	67%
近畿大学法科大学院	Kinki University	6	6	3	50%
熊本大学法科大学院	Kumamoto University	4	4	1	25%
久留米大学法科大学院	Kurume University	4	4	1	25%
慶應義塾大学法科大学院	Keio University	166	164	104	63%
甲南大学法科大学院	Kounan University	18	18	5	28%
神戸学院大学法科大学院	Kobe Gakuin University	3	3	0	0%
神戸大学法科大学院	Kobe University	62	62	40	65%
國學院大学法科大学院	Kokugakuin University	2	2	1	50%
駒澤大学法科大学院	Komazawa University	18	18	1	6%
島根大学法科大学院	Shimane University	1	1	1	100%
上智大学法科大学院	Sophia (Jochi) University	51	51	17	33%
駿河台大学法科大学院	Surugadai University	22	21	2	10%
成蹊大学法科大学院	Seikei University	25	25	11	44%
西南学院大学法科大学院	Seinan Gakuin University	4	4	2	50%
専修大学法科大学院	Senshu University	52	51	9	18%
創価大学法科大学院	Soka University	14	14	8	57%
大東文化大学法科大学院	Daitobunka University	20	19	4	21%

千葉大学法科大学院	Chiba University	27	26	15	58%
中央大学法科大学院	Chuo University	240	239	131	55%
東海大学法科大学院	Tokai University	3	3	0	0%
東京大学法科大学院	Tokyo University	173	170	120	71%
東京都立大学法科大学院	Tokyo Metropolitan University	39	39	17	44%
同志社大学法科大学院	Doshisha University	89	88	35	40%
東北大学法科大学院	Tohoku University	43	42	20	48%
東洋大学法科大学院	Toyo University	24	24	4	17%
名古屋大学法科大学院	Nagoya University	28	28	17	61%
南山大学法科大学院	Nanzan University	10	10	5	50%
新潟大学法科大学院	Niigata University	10	10	5	50%
日本大学法科大学院	Nihon University	58	54	7	13%
白鷗大学法科大学院	Hakuo University	7	6	3	50%
一橋大学法科大学院	Hitotsubashi University	53	53	44	83%
姫路獨協大学法科大学院	Himejidokkyo University	8	8	0	0%
広島大学法科大学院	Hiroshima University	12	12	3	25%
福岡大学法科大学院	Fukuoka University	5	5	3	60%
法政大学法科大学院	Hosei University	66	61	23	38%
北海道大学法科大学院	Hokkaido University	38	37	26	70%
明治学院大学法科大学院	Meiji Gakuin University	18	18	8	44%
明治大学法科大学院	Meiji University	97	95	43	45%
名城大学法科大学院	Meijo University	5	5	2	40%
山梨学院大学法科大学院	Yamanashi Gakuin University	11	11	6	55%
横浜国立大学法科大学院	Yokohama National University	10	10	5	50%
立教大学法科大学院	Rikkyo University	19	18	7	39%
立命館大学法科大学院	Ritsumeikan University	104	102	27	26%
早稲田大学法科大学院	Waseda University	19	19	12	63%
Totals		2125	2087	1009	48%