

**PCLL Conversion Examination**  
**January 2015**  
**Examiner's Comments**  
**Hong Kong Legal System**

**General Comments:**

The examination consisted of three questions; two of which were compulsory. The three questions addressed: LegCo's law-making capacities; the independence of the judiciary and what the rise in numbers of 'Litigants In Person' (LIPS) might tell us about access to justice in Hong Kong. The examination was held over one and a half hours and written on a closed book basis.

As with past exams, the examiners prepared a list of factors in advance of the examination that were relevant to answering each question. Thus, to answer the questions successfully, candidates needed to address a majority of those factors and to do so in a structured and relevant manner. Candidates should have also been able to express themselves in a clear and succinct manner. In order to answer the questions satisfactorily, candidates needed to have been able to cite relevant sources of law and/or major commentators in each area, as appropriate; this happened less than one would wish.

Intuitively it felt that the standard of performance in this examination was better than in past examinations. Once again it was possible to identify students who had access to the most up to date textbooks or who had attended classes in preparation for taking the examination. A small number of candidates (and again intuitively, a smaller number than in previous years) seemed to have no insight at all to what the questions were asking. These candidates, it is imagined, have had little or no guided access to Legal System specific resources. That or they had misunderstood the nature of the Legal System subject for one more akin to Constitutional Law? This was most evident in those candidates who attempted to answer questions by reference to Art.158 case law only. This has been a recurring theme in the HK Legal System examination and leads me to wonder why a number of candidates consistently place such emphasis on this line of cases in their preparation, to the exclusion of other relevant materials.

As in past years, the key reasons for failure to perform at a higher standard seem to be lack of comprehension of the scope and parameters of each question, failure to address the question adequately either by directing material to answer the specific question or by responding to only one part of the question. In particular this year candidates failed to address the broad range of issues and powers relating to LegCo's law-making activities and often focused significantly on need for assent to legislation by the NPCSC. Similarly in responding to the judicial independence question some students based the largest portion of their answer on Art. 158 case law to the exclusion of the *Valente* factors. This year the standard of English was generally very good. However there were some candidates for whom I would find it difficult to see how they had passed a reasonable standard of English language competence assessment given their written English in this examination. This matter should, I think, be addressed explicitly by the PCEA when setting out the expectations the examination authority has of the candidates. As ever, for some candidates the standard of written English was a significant component in their failure to respond clearly to the question. As I said in my 2013 report: Are we really doing these candidates any favours by allowing them to sit and re-sit examinations when their standard of written English alone is enough to throw doubt on whether they would be suited to a career in the law?

**Comments with regard to specific questions:**

1. Critically assess the current limitations on the Legislative Council's capacity to make law in a manner which is efficient and representative of the views of the Hong Kong people.

Generally students achieved a satisfactory answer to this question. A number covered the full range of issues and where candidates did less well, it tended to be because they had failed to consider a major factor such a split voting or the aspect of having functional constituencies in relation to representation of the broad sweep of Hong Kong people. The candidates generally focused on the representation aspect of the question. Ideally they would also have given more consideration to the efficiency aspect in terms of recent

filibustering and the use of the LegCo Bills Committee within a framework of an executive led system of governance.

2. To what extent is judicial independence currently at risk in Hong Kong?

This was the question in which candidates seemed most likely to fail to cover the relevant issues. A significant number did not address the *Valente* factors of tenure, salary, immunity, and institutional independence at all. Where this was the case they focused on the Art. 158 line of cases to demonstrate one way or the other that judicial independence was or was not at risk. Candidates needed to consider the domestic, internal aspects of judicial independence as well as the way in which they intersect extra-territorially with the powers of the NPCSC.

3. The high numbers of litigants in person before the Hong Kong courts suggest that access to legal representation, and therefore access to justice, is limited. To what extent do you agree and what steps, if any, might be taken to address this issue?

The candidates did generally satisfactorily in answering this question. Most covered the various forms of legal aid available in Hong Kong. However, the detail in which these were addressed and the link between the parameters to the availability of these and the reasons why LIP numbers have risen was often not sufficiently explored. Sometimes, it became more descriptive of the current legal aid system rather than a response to the question asked. However, a number of candidates did cover a wide range of actors including contingency fee proposals, the split profession, ADR and the complexity of the legal process.