

**PCLL Conversion Examination**  
**January 2016**  
**Examiner's Comments**  
**Hong Kong Legal System**

The examination consisted of three questions. Candidates are required to answer two out of the three questions.

All candidates attempted Question 2, which was concerned with the use of precedents by the HKSAR courts. Question 2 had three parts. They are inter-related in varying extents. Candidates who were able to understand how the three parts are related and then answer each part specifically would score good marks in each and every part. Common problems involved misunderstanding that the whole of Question 2 was to do with the doctrine of precedent, missing the constitutional basis allowing the use of foreign precedents (Article 84 of the Basic Law), failing to discuss rationales put forward for the HKSAR courts to use foreign precedents, failing to discuss caselaw that has set out the binding effect of UK precedents and local precedents (particularly *A Solicitor (24/07) v Law Society of Hong Kong* (2008) 11 HKCFAR 117 (CFA), which, inter alia, prescribed a new test for the Court of Appeal not to follow its previous decision), and failing to appreciate the more practical and adversarial oriented side of part (c).

A greater number of candidates attempted Question 1 than Question 3.

Question 1 should be understood from the legal perspective. Scores of candidates included in their answers discussion on whether the proposed “One Place, Two Checkpoints” arrangement may be put into effect politically and referred to current events such as the Lee Bo disappearance to support their impression that the arrangement could not be implemented. A significant portion of candidates failed to take account of the current border control arrangements and appreciate that the Mainland officials would be administering national laws on entry/exit, customs and public health control for the Mainland under the proposed arrangement and that such matters are not matters that the HKSAR Government administers on its own under the Basic Law or matters that are within the limits of the autonomy of the HKSAR. Other candidates failed to consider Article 18 and Annex III of the Basic Law, the history of the application of which would

throw light on how a change in a national law applying in Hong Kong is to be effected under the system prescribed under the Basic Law. Very few candidates have referred to the Interpretation and General Clauses Ordinance (Cap 1) that also dealt with changes in the national law, particularly in terms of the effect in the HKSAR's legal system.

Question 3 is to a significant extent a knowledge question. The first two matters that called for an answer simply require a description of the relevant topics with reference to the New Territories Ordinance (Cap 97) and some caselaw such as *Secretary for Justice v Chan Wah* (2000) 3 HKCFAR 293 (CFA). Many referred to the Small House Policy, which was and is an administrative arrangement and not customary law. With respect to the last matter, candidates often are able to mention the undesirability of safeguarding discriminatory practices based on succession along the male line but unable to consider the difficulties nowadays to understand the context and establish the content of customary law.