

**PCLL Conversion Examination**  
**January 2017**  
**Examiner's Comments**  
**Hong Kong Legal System**

Students were required to answer two questions out of three on a closed-book basis. The examiner prepared the examination questions as well as the answer guide listing relevant factors, issues and authorities that candidates were expected to discuss. To answer the questions successfully, candidates needed to demonstrate a good understanding of the questions and they should also be able to express themselves in a clear and coherent manner. Candidates were also expected to cite relevant authorities including cases, legislation and authoritative texts/articles as appropriate. A holistic approach was taken in marking the papers and candidates would be given points even the marking guide was not strictly adhered to.

The overall standard was average. There were only a small number of papers that could be said to have reached a good standard. There were also quite a number of failures. The main problem lies with the inability to understand and answer the questions as well as the inability to cite supporting authorities. The average candidates were able to demonstrate a certain level of knowledge but their answers were often descriptive. These candidates had a tendency to ignore the focus of the question. The better candidates were able to show a clear understanding of the questions and were able to list out relevant arguments supported by authorities.

The three exam questions were on different topics and candidates must be able to demonstrate an ability to understand the question, a good knowledge of substantive law as well as the ability to analyse and criticise.

Below are observations on how candidates performed in relation to each question:

**Question 1**

*One of the main objectives of the Civil Justice Reform is to improve access to justice. To what extent has this objective been achieved in Hong Kong?*

Most candidates only concentrated on the various legal aid schemes. Although this question was not aiming at an analysis of the Civil Justice Reform, candidates should at least know some of the recommendations (for example, recommendations aimed at better case management and the use of ADRs). Candidates should also consider the problems of costs and efficiency of legal services as well as conditional fees. Merely describing the legal aid schemes is not sufficient.

Candidates who dealt the legal aid system may be entitled to a few marks. Although the CJR was not specifically highlighted in the syllabus development was. Candidates who just referred to legal aid will thus get very few marks for that question.

## **Question 2**

*The State of Howa (a hypothetical state) is currently building a new jury system. Defendants charged with serious crimes will be tried by a panel of five jurors and two judges sitting together at the first instance court. By a simple majority, the panel will rule on both guilt and sentencing. The majority must, however, include at least one of the two judges on the panel. The panel will try all defendants facing either a potential sentence of death or a sentence of indeterminate length, as well as crimes involving an intentional act that caused death. All persons under 18 and over 70 are automatically excluded from the pool of available jurors.*

*The panel (five jurors and two judges) should discuss and evaluate evidence throughout the trial, including lunch hours and recess times. Jurors without a legal background will need to go through a one-week intensive law training course organised by the judiciary of the State of Howa.*

*How different is the jury system in Hong Kong as compared to the State of Howa? Critically evaluate the advantages and disadvantages of the jury system in Hong Kong as compared to the one in the State of Howa.*

This question is more straightforward and most students were able to understand it. This question requires a detailed comparison of the two jury systems (for example, training, composition of the jury, determination of outcome, qualifications and exceptions) as well as the pros and cons of the jury system in Hong Kong *as compared* to the State of Howa. Candidates who merely listed out the advantages and disadvantages of the jury system in Hong Kong would fail this question. The better candidates were able to compare analytically with supporting provisions under the Jury Ordinance.

## **Question 3**

*The police in Hong Kong are given enormous powers and tighter controls should be introduced.*

Some candidates did not show a good understanding of this question and they merely focused on their opinions on the Occupy Central movement. This question requires a discussion of police powers under the Police Force Ordinance as well as the relevant provisions under the Basic Law. Candidates should also discuss the Rules and Directions for the Questioning of Suspects and the Taking of Statements as a form of control over the exercise of such powers.