

PCLL Conversion Examination
January 2018
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 below 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 lay in an inability to understand and answer the questions in a sufficiently detailed manner as well as an inability to cite supporting authorities. Average candidates (those who passed, but only just) were able to demonstrate a certain level of knowledge but their answers were often largely descriptive and lacking in analytical rigour. These candidates had a tendency to ignore the focus of the question and instead simply write out information they knew that was related. 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 but candidates were required in all cases to 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

Is Hong Kong's system of government characterized by 'separation of powers'? Should it be? Critically discuss.

Virtually all candidates attempted to answer this question. Most were able to identify the concept of the separation of powers and identify the three branches of government. Stronger papers noted specific Basic Law articles relevant to this concept, explained how it worked in practice in Hong Kong with specific examples, and then offered a critical analysis of whether or not this was a good way to run a government or not. Weaker papers may have recognized the concept of separation of powers and discussed in general terms without specific examples or authorities. Failure papers often simply interpreted the concept to be coterminous with judicial independence and wrote an answer to a question that was not asked.

Question 2

What is the difference between the 'thin' and 'thick' accounts (also described as the 'formalist' and 'substantive' accounts) of the rule of law? Which version do you believe most accurately reflects the rule of law in Hong Kong? Why?

Comparatively few candidates chose to answer this question, and even fewer did it well. Successful papers correctly identified the distinction between formalist and substantive conceptions of the rule of law, drawing upon the relevant materials in the syllabus. They then drew from a wide range of examples in Hong Kong's to justify a contention that one or the other accurately reflected the rule of law as practiced here. Failure papers incorrectly identified the meaning of the concepts, for instance arguing that a substantive account simply meant that the rule of law was successful or the phrase itself was identified in a written constitutional document.

Question 3

Identify arguments both for and against the ban on 'contingency fees' (also known as 'conditional fees') in Hong Kong.

A majority of candidates attempted to answer this question. Good answers began by correctly explaining the meaning of contingency fees, though this was not strictly necessary as your understanding could be inferred from the rest of your answers. Successful answers also tended to reference the concepts of maintenance and champerty to help explain the current status of contingency fees in Hong Kong, and related cases. Successful answers also provided several pros and cons before advancing an overall conclusion. Failure papers either fundamentally misunderstood what contingency fees were, talked instead entirely about the legal aid system, or made almost no arguments in favour or against the introduction of contingency fees.