

PCLL Conversion Examination
January 2019
Examiner's Comments
Hong Kong Legal System

The Examination Paper had 3 questions. Students were required to answer 2 out of the 3 questions.

Question 1: This question tested the students' understanding of: (a) Hong Kong as a common law based legal system and the common law method of adjudication; (b) the contrasts and differences between Hong Kong's common law based legal system and Mainland China's civil law/socialist law based legal system, which are usually commented as contributing to difficulties in the facilitation of development of commerce; and (c) how Hong Kong can improve its legal system in the commercial field. The examination scripts indicate that in **answering (a)**, students were in general able to point to the particular features of the doctrine of precedent, the transparency of a reasoned judgment, and the capacity to refer to decisions of courts of common law jurisdictions outside Hong Kong; in **answering (b)**, some students encountered a difficulty in comparing like with like, which might be due to a lack of understanding of the legal system of the People's Republic of China (even though introductory texts of the Hong Kong legal system had dealt with this topic and it was sufficient for (b) to understand the matter in outline); and in **answering (c)**, many students were able to refer to recruitment of more judges (including those from common law jurisdictions outside Hong Kong) and the buttressing of safeguards of judicial independence as viable ways to improve the current situation of Hong Kong's common law legal system.

Question 2: This question had two parts. **The first part** addressed the events and debates that led to commentators, etc expressing views that Hong Kong's Rule of Law is in "deterioration". Many students had referred mainly to the debates over the NPCSC's power of interpretation of the Basic Law and the interpretations made by the NPCSC in the last 20 years. This was not regarded as a sufficient answer. More recent events, such as those occurring since 2014, should be included. Some students were only able to provide a discussion of the "thick" and "thin" notions of the Rule of Law or of the concept of the Rule of Law in general without touching upon the current situation in Hong Kong and such answers were regarded as inadequate. **The second part** asked the students to examine the values that underlie the Rule of Law and its protection with the starting point being Tang PJ's remarks. Students who were able to provide a rational discussion on the maintenance of the Rule of Law through the safeguarding of the free press and free elections would have produced a strong answer. Other students who provided a reasoned expression of their own views of Tang PJ's remarks were also regarded as having provided an adequate answer. It is noted a wide range of views had been expressed and the focus of the marking was on the ability of the student to state his own views with elaborated reasoning.

Question 3: This question was a straightforward question for students to show their knowledge of the means to access justice in Hong Kong, which include civil and criminal legal aid, the Duty Lawyer Service, various schemes of free legal advice and the

Judiciary's Resource Centre for Unrepresented Litigants. Students were required to demonstrate their knowledge not only of the existence of these means to access justice but also particular features of them that were relevant to the proposition of the question, including means and merits testing, the availability of follow-up service, the availability of representation). Students were lastly required to maintain an argument for or against the proposition of compulsory *pro bono* work for all Hong Kong lawyers. Most students who answered this question did so adequately in covering all three aspects stated above.