

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

**General Comments:**

The examination paper consisted of three questions of which candidates were asked to answer any two. The three questions addressed: the courts and tribunals of Hong Kong; the qualifications and training necessary to enter and remain within the legal professions; and the common law rules of stare decisis and statutory interpretation. 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; and to go beyond mere description to engage in the analysis required to answer the question set.

Intuitively the standard attained generally seemed to be roughly comparable with that achieved in the previous examination, although there did seem to be a striking preponderance of papers around the 50-58% level. Fewer candidates than in previous examinations seemed to have no insight at all to what the questions were asking. That said, there were again some candidates who seemed intent on answering most of the questions by reference to Art.158 case law only. As I noted in my previous report, 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, two of the key reasons for failing to answer the questions well were either a failure to address the full breadth of the topic(s) raised in the question or that the answer was limited to describing the topic raised in the question rather than also analysing that topic in order to answer the specific question asked.

As in the January examination, the standard of English was generally good. However again there were some candidates who struggled to respond in a level of English adequate to the task. I would reiterate my previous recommendation that candidates must be aware of the necessity of a good standard of written English.

## **Comments with regard to specific questions:**

### **Question 1** (50 marks)

Critically assess the role of each of Hong Kong's various courts and tribunals in ensuring that justice is done and the rule of law is implemented. How, if at all, would you change, or add to, the existing courts and tribunals functions and jurisdictions to enhance justice in Hong Kong?

Generally, where candidates fell down on this question, it was because they either simply described the hierarchy of courts and tribunals and their respective jurisdictions but did not look at how these promoted justice and the rule of law or they confined themselves to a discussion of the courts only, and at times this was limited even further to consideration of some but not all of the courts. In general more discussion of how the limits on jurisdiction achieve justice or not would be welcome: for example, that more serious cases are heard by more senior judges; the role of the appeals jurisdiction; and the suitability of the tribunal format for certain types of cases.

### **Question 2** (50 marks)

How, if at all, would you reform legal professional qualification and training necessary to become and remain a lawyer in Hong Kong in the twenty-first century and why?

Some candidates answered this question very well and indeed, some candidates gave some very trenchant, but informed, responses taking in the impact of the current form of legal education and the conversion exams on ability to enter the professions! However, where candidates could have done better they often answered the question as a discussion on the relative merits or otherwise of a fused or split profession rather than on an explanation and analysis of the current qualifications and training processes necessary to enter the profession. There was little, if any, mention of continuing professional development. Also, greater focus on the community's specific legal needs in 21st century Hong Kong was a key factor in answering the question. Few candidates considered how the use of technology might be incorporated into training; how to work within a legal culture increasingly peopled by litigants in person; the growth of ADR; how cross-border awareness was necessary; as well as the changing linguistic skills necessary in legal practice today.

### **Question 3** (50 marks)

To what extent do Hong Kong's common law rules of stare decisis and statutory interpretation achieve the correct balance of flexibility and certainty of law?

Here candidates tended to focus overwhelmingly on the stare decisis part of the question only. Where they did venture into a discussion of the impact of statutory interpretation, it

was often in relation to the Basic Law Article 158 interpretation clause. Given that the application of Article 158 arises in fewer cases than the general common-law rules of literal or purposive (leaving aside the mischief and golden rules for now) statutory interpretation, it is difficult to see why this focus? Moreover, the question asks specifically about the *common law rules* of statutory interpretation. However, candidates were generally good on the stare decisis part of the question though some seemed unaware of the CFA's judgment in *Solicitor* still. Again, where candidates could have done better it was usually because they focused on stare decisis only to the exclusion of statutory interpretation or they simply described the rules and did not analyse how they operated to promote or balance flexibility and certainty of law.