

**PCLL Conversion Examination**  
**June 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. The majority of exams read were of disappointing quality. Many students appeared to have not revised many basic topics on the PCEA syllabus and were relying on their knowledge of foreign legal systems and simply hoping it would apply in Hong Kong. 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**

*In March 2018, the Government announced the appointment of Baroness Hale, current President of the Supreme Court of the United Kingdom, and Beverley McLachlin, former Chief Justice of the Supreme Court of Canada, as non-permanent members of the Hong Kong Court of Final Appeal.*

- a) *Identify the legal authority and appointment process for these appointments.*  
(15 marks)

A passing grade required identification of the relevant ordinance and Basic Law provisions related to the appointment of overseas judges and explaining in general terms how the appointment process worked. High grades identified specific clauses – eg HK CFA Ordinance ss. 5, 9, 7, BL Art. 82).

- b) *Explain the role of non-permanent judges on the Court of Final Appeal and the distinction between them and the permanent judges.*  
(15 marks)

A passing grade required noting that the actual role of the NPJ when on the bench was the same as that of the PJ – the duties are the same. The differences come in security of tenure, etc

- c) *Offer a critical analysis of having foreign judges sit on cases of great and general importance to Hong Kong.* (20 marks)

Any reasonable argument that considered pros and cons of having foreign judges would receive a passing grade; your ultimate conclusion was not relevant.

## **Question 2**

- a) *Identify and describe the primary sources of law in Hong Kong* (30 marks)

A passing grade required identifying key sources of HK law: common law, equity, Chinese customary law, legislation, national laws implemented through Annex III, NPCSC Interpretations, and then briefly describing each. Many students mentioned only one or two sources, or mentioned several but did not describe in any detail what they were, which the question asked you to do.

- b) *Which of these primary sources, in your view, has the greatest impact upon the average resident? Why?* (20 marks)

Again, any reasonable argument would receive a passing grade, but you were required to actually defend your opinion and consider possible counterarguments. Many students failed to achieve this basic level of competence.

## **Question 3**

*The Hong Kong legal profession is split between barristers and solicitors.*

- a) *Explain the differences between these two branches of the legal profession.* (30 marks)

A passing grade required identifying a number of differences between barristers and solicitors, but not every student had to identify the same ones. Examples include governance, practice, pay, rights of audience, client relationships, etc. A passing grade required you to actually explain the differences, not just list them. Many students could only identify very basic differences such as interactions with clients, or could not offer any specifics on the regulation of barristers and solicitors in Hong Kong, suggesting they had not revised from the syllabus.

- b) *Many jurisdictions have adopted a 'fused' legal profession, abandoning the distinction between the two branches. Should Hong Kong do likewise? Critically discuss.* (20 marks)

Again, any reasonable argument would receive a passing grade, but as with the other questions a student had to defend their opinions and consider possible counterarguments.