

## **PCLL CONVERSION EXAMINATION, JANUARY 2016**

Title of Paper : Hong Kong Legal System  
Date : 7 January 2016  
Time : 3:00 p.m. – 4:30 p.m.

### **Instructions**

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. **NO** reading time is designated for this paper.
6. This is a closed book examination.
7. This paper consists of 2 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK  
UNTIL YOU ARE TOLD TO DO SO**

# PCLL Conversion Examination January 2016

## Hong Kong Legal System

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

The Secretary for Justice had indicated on 21 November 2015 that the Central Government and the HKSAR Government had reached a consensus to enable an arrangement to be made at the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Mainland officials to exercise powers under national laws on entry and exit, customs and public health control within the HKSAR. How do national laws apply in the HKSAR? Are there limitations for the application of national laws generally and the national laws specified above in the HKSAR? How are national laws cited and applied before the courts of the HKSAR? If there is a change to a national law applying in Hong Kong, how is this change to be given effect in Hong Kong? Do you believe the arrangement above can be lawfully put into effect? State your reasons for believing or not believing that the arrangements above can be lawfully put into effect.

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

- (a) To what extent does the legal system of the Hong Kong Special Administrative Region allow the use of foreign precedents in the adjudication of cases before the courts of the Region? What are the rationales put forward for the courts of the Region to make use of foreign precedents? **(15 Marks)**
- (b) What are the present binding effects (if any) of precedents of the United Kingdom courts on the courts of the Hong Kong Special Administrative Region, including the English Court of Appeal, House of Lords, the Privy Council and the UK Supreme Court? Would your answer be different if the United Kingdom precedent in question was decided prior to 1 July 1997 and why? **(20 Marks)**
- (c) Your opponent in an appeal before the Court of Appeal has cited a Court of Appeal judgment, apparently on the same legal issue and decided on a date subsequent to the Court of Appeal judgment you rely on in support of your case. What are the possible arguments you can submit in response? **(15 Marks)**

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

Article 8 of the Basic Law of the Hong Kong Special Administrative Region provides that the laws previously in force in Hong Kong includes “customary law”. What comes within the category of “customary law” in the legal system of the Region? What are the types of cases that illustrate the role of “customary law” in the present legal system of the Region? Should “customary law” continue to govern these types of cases? State your reasons for your view in respect of the last question.

**~ End of Examination Paper ~**