

## **PCLL CONVERSION EXAMINATION JUNE 2016**

Title of Paper : Hong Kong Legal System  
Date : 28 June 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 3 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 June 2016

### Hong Kong Legal System

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

In the World Economic Forum's Global Competitiveness Report 2015-2016, Hong Kong SAR is ranked number 4 among 140 countries/territories in the index component of "judicial independence", scoring 6.3 out of 7 in respect of this question: "In your country, how independent is the judicial system from influences of the government, individuals or companies" (1=not independent at all; 7=entirely independent). For information, the countries numbered 1 to 10 in the same ranking are: (1) New Zealand, (2) Finland, (3) Norway, (4) Hong Kong SAR, (5) Denmark, (6) Switzerland, (7) Netherlands, (8) Ireland, (9) Luxembourg, and (10) United Kingdom. Singapore is ranked number 23, United States number 28, Chinese Taipei number 47 and China number 67.

- (a) What are the essential factors and qualities that contribute to this high ranking of judicial independence of the Hong Kong SAR? (20 marks)
- (b) What are the risks or potential pitfalls that may contribute to the Hong Kong SAR slipping down the ranking? (20 marks)
- (c) What can lawyers in Hong Kong do to help in maintaining judicial independence in Hong Kong? (10 marks)

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

Professor Mo Jihong of the Chinese Academy of Social Sciences stated in April 2016 that some legal practitioners in Hong Kong failed to understand the legal system of the Hong Kong SAR, emphasizing that after 1 July 1997, the Hong Kong SAR's legal system is not the same as the common law system adopted before that date; and that since the Hong Kong SAR's legal system now draws its authority from the Constitution of the People's Republic of China and Mainland laws, and is part of the Chinese legal system, a "new perspective on the rule of law" should be established based on the PRC Constitution.

- (a) Do you agree with Professor Mo's proposition that the Hong Kong SAR's legal system is part of the Chinese legal system? Please explain your answer with reasons and citing all relevant authorities. (25 marks)
- (b) Do you agree with Professor Mo's proposition that the PRC Constitution is the principle and basis for interpreting or defining legal rules in Hong Kong, as opposed to the common law? Please explain your answer with reasons and citing all relevant authorities. (25 marks)

**Question 3 (50 marks)**

On 18 February 2016, the UK Supreme Court and the Privy Council decided in *R v Jogee* [2016] UKSC 8 and *R v Ruddock* [2016] UKPC 7 (from Jamaica) that the principle on secondary liability for murder established in the case of *Chan Wing Siu v R* [1985] AC 168, a Privy Council decision on appeal from Hong Kong, “was based on an incomplete, and in some respects erroneous, reading of the previous case law, coupled with generalized and questionable policy arguments” and should be disapproved. The UK Supreme Court and the Privy Council then provided a restatement of the principles in respect of secondary participation in crime.

Assume that the Hong Kong Court of Final Appeal has given leave to appeal to an applicant who was convicted of murder on the basis of secondary liability following the principle set out in *Chan Wing Siu* -

- (a) If you are counsel for the applicant, how would you seek to persuade the Hong Kong Court of Final Appeal to apply the principles now restated in *Jogee* and *Ruddock*? Please cite all relevant authorities. (25 marks)
- (b) If you are counsel for the prosecution, how would you seek to persuade the Hong Kong Court of Final Appeal to continue to follow *Chan Wing Siu* in spite of *Jogee* and *Ruddock*? Please cite all relevant authorities. (25 marks)

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