

PCLL Conversion Examination
January 2025 Examiner's Comments
Hong Kong Legal System

Candidates are required to answer 2 out of 3 questions. Each question carries 50 Marks. The pass mark is 50 Marks.

Question 1

1. All candidates attempted Q1. This Question referred to Article 84 of the Basic Law of the HKSAR and asked questions about the sources of laws of the HKSAR, the hierarchy or relationships of superiority-inferiority among those laws, and the doctrine of precedent of the HKSAR courts.
2. Q1(a): Most candidates were able to state the sources of HKSAR law by reference to Articles 8 and 18 of the Basic Law of the HKSAR and were awarded full marks. A small minority omitted either the Basic Law itself or legislation enacted by the HKSAR legislature. A few, surprisingly, missed the topic of the question altogether.
3. Q1(b): A large majority of candidates were able to recognize the Basic Law of the HKSAR as a superior law (by virtue of Article 11(2) of the Basic Law). A good number of candidates were able to recognize also the National Security Law as a superior law (by reference to Article 62 of the National Security Law). Some candidates inquired into the relationship between the Basic Law and national laws in Annex III to the Basic Law. Some candidates discussed the relationship between primary legislation and subsidiary legislation and the relationship between legislation and common law. However, a sizeable portion of candidates took the wrong turn to discuss NPCSC interpretations of the Basic Law: An interpretation of the Basic Law has been regarded by the Court of Final Appeal as stating the meaning of the relevant provision of the Basic Law from the date of the Basic Law's commencement, and so there is no question of NPCSC interpretations of a provision of the Basic Law standing on their own as superior laws. A few candidates, surprisingly, seemed to have read the whole of Q1 as concerning the judiciary and the doctrine of precedent and began to write in this part (Q1(b)) matters concerning vertical doctrine of precedent.
4. Q1(c): A very large majority of students were able to discuss the doctrine of precedent adopted by the HKSAR courts with reference to *A Solicitor (24/07) v Law Society of Hong Kong* (2008) (CFA), making distinctions over vertical doctrine of precedent, horizontal doctrine of precedent and pre-1997 and post-1997 foreign precedents. However, a few students included in their answers content about the methods of interpretation of statutes, and they were not awarded marks for that part of their answers.

Question 2

5. As between Q2 and Q3, fewer candidates attempted Q2. Those who attempted Q2, a question on the use of mediation in Hong Kong and the promotion of the use of mediation services by the Hong Kong public, invariably began their answers with a brief and useful description of mediation as a distinct form of alternative dispute resolution. They were then able to discuss the objectives and measures taken by the courts and the Government to promote the use of mediation in litigation and enhance the provision of mediation services in resolving disputes. Most were able to refer to the Civil Justice Reform and the Judiciary's promotion of mediation through practice

directions, pilot schemes and information offices. Many were able to refer to the establishment of dispute resolution by mediation in the fields of financial products (Financial Dispute Resolution Centre), communications products (Communications Authority's customer complaint settlement scheme), and small claims, land, building management and other disputes (Joint Mediation Helpline Office). Many were able to refer to the legal infrastructure provided by the Mediation Ordinance and the accreditation organized under the HKMAAL.

Question 3

6. As indicated above, more candidates attempted Q3. This is question on legal representation and legal aid.
7. Q3(a): A rather large portion of candidates did not answer this part of the question. Some answered it with materials on the higher rights of audience of solicitors and the general rights of audience of barristers. The right answer was provided by candidates who understood the types of claims adjudicated by the Labour Tribunal and the Small Claims Tribunal and from that the objectives of establishing the tribunals and then proceeded to assess the merits and demerits of lawyers participating in the adjudication of those claims.
8. Q3(b)(i): Most candidates answered this part of the question by reference to provisions of the Basic Law and the Hong Kong Bill of Rights that guarantee access to justice in litigation. That did not complete the answer since publicly funded legal representation had been established decades before the enactment of the Hong Kong Bill of Rights and the commencement of the Basic Law. The better answers had to involve the twin consideration of the perspectives of the litigant (both the civil litigant and the criminal defendant) and of the courts (bearing in mind the umpire role of the court in Hong Kong's model of adversarial and accusatorial litigation).
9. Q3(b)(ii): Most candidates were able to answer this part of the question by reference to the various legal aid schemes and the criteria for granting aid under those schemes. Most were able to point to the means test and merits test and the Director of Legal Aid's discretion to waive the means test in specified human rights cases.
10. Q3(c): This part of the question explored the distinction between civil legal aid and criminal legal aid. Some answers were incomplete, which could have been an indication of the candidate's difficulty in allocating time to write answers. The better answers referred to the Widgery criteria for granting criminal legal aid and the advantageous position of the criminal courts to assess, in the interest of justice, whether a defendant before them should have legal representation at trial or on appeal. Some answers also referred to the fact that an avenue of appeal is available against refusal of civil legal aid (but not for refusal of criminal legal aid) or the distinction between civil justice and criminal justice.

General observations

11. (a) Candidates had the benefit of 15 minutes of reading the questions. It was thought that candidates could use the time to appreciate the focal points of each portion of each of the questions, select the questions to answer, consider the materials they may refer to assist in answering the questions, and allocate time for answering the questions.

(b) A not insignificant portion of candidates who chose to attempt Q1 or Q3 answered the relevant question in a composite piece of writing not making any distinction between the portions of the question. This was more than undesirable. This was to the

disadvantage of the candidates. Examiners had to make a delicate and benevolent effort to read through such answers to score them. Examiners could have instead decline to score them or only score them as if they were an answer for the first portion of the relevant question.