

PCLL Conversion Examination
January 2011
Examiner's Comments
Hong Kong Legal System

The examination consisted of three questions two of which were compulsory. The three questions addressed: stare decisis, the office and function of the Chief Justice and reform of the legal profession. The examination was held over two 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.

The overall standard was variable and it seemed that, while there were a number of papers that could be said to good and, in some case, very good, there was a considerable portion that were not very good and many that were not of a passing standard.

As before, there were various reasons for the failure or poor grades given to some papers: lack of relevant knowledge, lack of comprehension of the scope and parameters of each question, failure to address the question adequately either by directing material to answer the specific question or by responding to only one part of the question, and an inadequate standard of written English necessary to clearly communicate a response to the question. However, given that each question set required the candidates not only to describe the relevant law accurately but then to analyse it in relation to the 'problem' set up by each question, a high number of candidates did poorly because they simply described the law and did not analyse the law in relation to the problematic construct within each question. Indeed, it seemed that some students had prepared a 'model' answer to previous questions or to a general question on one area and simply regurgitated that model answer without engaging their critical or analytical skills.

With regard to specific questions:

1. To what extent do the rules of stare decisis in Hong Kong promote or inhibit judicial law-making?

A key problem for candidates in relation to this question was a seeming lack of familiarity with the concept of 'judicial law-making'. Quite a number seemed not to be aware of the debate concerning declaratory theory versus judicial activism through judicial law-making. A further problem was a lack of detail in relation to the rules of stare decisis in general and in particular in relation to recent developments in Hong Kong by virtue of the decision in *A Solicitor v The Law Society* [2008]. Once again, candidates seemed to describe rather than analyse or to answer only one part of the question.

2. How, if at all, do the office, function and powers of the Chief Justice benefit or detract from the operation of the rule of law in Hong Kong?

Very few candidates seemed to have any breadth of knowledge about the office, function and powers of the Chief Justice. In fact, a number of candidates seemed to conflate the positions of the Chief Justice and the Secretary for Justice, with a few even going so far as to include aspects of the Chief Executive's powers and functions in their responses. While most candidates were able to outline the doctrine of the rule of law to some degree, they were then largely unable to bring to bear what information they did possess in regard to the office, function and powers of the Chief Justice to consider the extent to which these had any effect, either positive or negative, on the way in the rule of law existed in Hong Kong.

3. 'In order to enhance both the quality of legal services and access to justice in Hong Kong, extensive reform of the legal professions is necessary'.

Very few candidates answered this question accurately. It seemed that most treated the question as being composed of two separate halves instead of considering reform of the legal professions as a means of improving both the quality of legal services and as a means of improving access to justice. In relation to the access to justice point, the majority of candidates did not even tie this to reform of the professions and instead talked about the need for greater provision of legal aid to enhance access to justice. Furthermore, a number of candidates inaccurately included reform of the judiciary within the scope of reform of the legal professions. Lastly, few candidates seemed to have much breadth or depth of knowledge in relation to reform of the professions. However, where a candidate offered a good response to the question, it was usually a very good response, suggesting that this had been a topic of revision by that candidate.