

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

The examination consisted of three questions two of which were compulsory. The three questions addressed: HK sources of law, jury service and reciprocity between the HKSAR and PRC legal systems. 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, as appropriate.

The overall standard was not very good and was, impressionistically, not as good as in previous sessions. There were a very small number of papers that could be said to have attained even a very good, let alone excellent, standard. The vast majority were at the level of a very bare pass.

On the whole, the same reasons for the poor standard of performance were present as in previous sessions: 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, on this occasion it seemed that these factors had a detrimental impact on the performance of a wider group of candidates.

In particular the two main problems seemed to be: first, that candidates had not covered the syllabus but had instead revised the right of abode line of cases and the rules of precedent. Even where these topics were not relevant to the questions set, a number of candidates simply wrote out all that they knew about these two areas. Even where candidates did have some relevant knowledge they failed to use it to answer the question and so they merely described rather than describe and analyse. Again, as in previous sessions, 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. The second main factor we have identified as giving rise to poor performance is wholly the result of speculation on the examiners' part.

With regard to specific questions:

1. As a primary source of Hong Kong law, the legislation passed by the Legislative Council, and the way it subsequently applied by the courts, cannot be said to be representative of the views of the Hong Kong people in general. Discuss.

The key problem for candidates in relation to this question was that they did not answer both parts of the question and focused either on legislation or on case law. Very few candidates outlined the legislative process. Moreover, many seemed unaware of any of the debates surrounding the composition of LegCo or of the relevance of the rules of statutory interpretation in judicial application of legislation. Once again, candidates seemed to describe rather than analyse and to answer only one part of the question.

2. Identify and critically evaluate the current system of jury service in Hong Kong.

Most candidates answered this question by evaluating trial by jury in general rather than jury service in particular. There were a number of factual errors in the material presented, often being correct in English law but incorrect for Hong Kong, and very little analysis. A fair number of candidates mentioned the proposals for reform suggested by the LRC but this was not a significant proportion of candidates.

3. To what extent is the current degree of reciprocity between the HK legal system and the PRC legal system satisfactory?

Very few candidates answered this question well or even to a passing level. The key problem was that the candidates responded by taking 'reciprocity' to mean either 'similarity' or 'autonomy'. Neither of these words conveys the meaning of 'reciprocity' and that this mistake should arise with candidates who are currently law students at universities overseas and are seeking to enter the PCLL is a cause for concern in terms of standards. Moreover, it suggests that candidates are not looking at the syllabus as a whole when they prepare for the examination or they would have been aware of the topic of reciprocity, including mutual judicial assistance, prosecutions, extradition and enforcement of awards. There were a very small number of candidates who did answer on topic and while their responses were generally brief they were at least relevant.