

**PCLL Conversion Examination**  
**January 2020**  
**Examiner's Comments**  
**Hong Kong Legal System**

**Question 1**

Public confidence in the independence of courts is of utmost importance to the functioning of any legal system. Moreover, courts must not be perceived to be sidestepping into the realms of the executive and the legislature in order for the separation of powers to operate effectively. Common law courts must therefore ensure that disputes are adjudicated based on the law, and that the outcomes of cases are not influenced by social, economic, or political factors, as well as by any personal conviction of judges. Courts must also be able to effectively communicate to the public that they are acting impartially.

In the above context, **Question 1** asks students to explain the principles and/or practices that common law (including Hong Kong) courts have adopted and applied in the process of adjudicating cases to inspire confidence in the impartiality of the judiciary. These include, for example, the doctrine of stare decisis, the rules of statutory interpretation, the practice of judicial deference and the practice of recusals/recusal applications. The applications of the above are thoroughly communicated to the public through the practice of common law courts giving elaborative judgments. Such a practice promotes open justice and reinforces confidence in the administration of justice (i.e. that judicial power has not been abused).

The recent political debates and controversies in Hong Kong – including the instances where the National People's Congress Standing Committee sought to interpret the Basic Law - have given rise to concerns over judicial independence. A significant number of students only focused on such debates. In answering this question, however, students should understand that judicial independence is a much broader concept, and the capability of courts to resist political interference is only part.

**Question 2**

**Question 2(a)** asks students to describe the main features of the jury system. Most students are successful in listing some of the basic features of the jury system such as its function and design, the eligibility of jurors and that it is protected under article 86 of the Basic Law.

**Question 2(b)** asks students to identify the arguments both for and against the use of juries in Hong Kong's criminal trials. The arguments for the jury system are such as how it promotes a sense of openness and transparency, allows for the introduction of community conscience in the application and enforcement of laws, enables a potential safeguard against oppressive prosecutions. The arguments against the jury system are such as: the opaque decision making process, (and given that they do not have to give reasons for their verdict) their reasoning is not appealable, that jurors may not be able to fully grasp the complexity of the law and court procedures, and that jurors may be prejudiced and when they are it is difficult to detect.

Many students were able to name and elaborate upon some of the above arguments satisfactorily and some were further able to point to current controversies in illustration.

### **Question 3**

Police officers are responsible for a wide range of tasks from patrolling, conducting investigations into crimes, policing public order events to ticketing traffic offences.

**Question 3(a)** asks students to list the types of powers conferred on police officers when they execute their duties, such as the power to stop, detain and search a suspect, the power of arrest, and the power to seize property. Most students were able to name at least two to three of the above powers. A few were diligent enough to further point to situations where the interception of communications are legally permissible and the power of the police to approve public meetings and processions. A significant proportion of students were, however, incorrect as to the law governing some of these powers, e.g. situations justifying a warrantless search and the low threshold in relation to the power to stop and demand one's ID proof.

**Question 3(b)** is rather unsatisfactorily answered. Few students were able to point to the obvious – that police officers are not above the law and may also be criminally charged or be sued in a civil proceeding over their misdeeds. Many listed the Ombudsman as a possible channel of complaint, not realizing that the powers and jurisdiction of the Ombudsman relate to only complaints of maladministration and also that the Hong Kong Police Force is expressly excluded from its mandate. Most students who attempted the question were not able to properly name the Independent Police Complaints Council (IPCC) and most of those who did were not able to properly describe its functions (e.g. thinking that IPCC could investigate into police complaints).

**Question 3(c)** were too unsatisfactorily answered. Few were able to point to such limitations as the difficulty in identifying officers, the potential conflict of interest if officers were to criminally investigate into the misconduct of their peers (the same with complaint investigations conducted by the Complaints against the Police Office, CAPO), the lack of substantive powers enjoyed by the IPCC over investigations conducted by CAPO, civil suits potentially settled out of court with public funds and etc.