

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

1. The examination was held in the morning of 17 June 2025. Candidates had 15 minutes of reading time and 2 hours of writing time. The examination is an open book examination.
2. Candidates are required to answer 2 out of 3 questions. Each question carries 50 Marks. The pass mark is 50 Marks.

Question 1

3. Almost all candidates attempted Q1. This Question referred to Chief Executive John Lee's description of the 'golden reputation' of Hong Kong's common law tradition. The Chief Executive considered this as contributing to Hong Kong's position as a leading centre for international legal and dispute resolution services in the Asia-Pacific Region. Part (a) of the question requires identification of the elements or features of Hong Kong's common law tradition. Part (b) of the question asks how these features could be said to have contributed to the 'leading success' above.
4. Q1(a): Many candidates answered this part by reference to provisions of the Basic Law. However, this approach is liable to omit or ignore features that are inherent in a common law based legal system or that are based on practice. Such features include the systemic element of the common law to evolve over time through caselaw decided by judges applying concepts, interests and values derived from previous judgments to meet the changing needs of society, and practice elements that incline to determine legal dispute through adversarial oral proceedings through the agency of legal professionals who present cases fearlessly and independently before courts of law. Some candidates made reference to the HKSAR's common law approach towards interpretation of statutes and scores were given to this point too. Some candidates referred to the Hong Kong Court of Final Appeal inviting non-permanent judges from common law jurisdictions outside Hong Kong sit in cases. But this is not a feature that is shared among common law jurisdictions and does not contribute towards the constitution of the common law tradition. Some candidates referred to the concept of separation of powers. But this is not a feature of a common law based legal system; Arguably, England could not be considered having separation of powers until the establishment of the United Kingdom Supreme Court.
5. Q1(b): Many candidates were able to identify at least one of the two sets of arrangements in Hong Kong that have contributed to Hong Kong's leading position as a centre for international legal and dispute resolution services. The two sets of arrangements are alternative dispute resolution (ADR) and judicial assistance. In relation to ADR, candidates usually were able to discuss Hong Kong's frameworks and policies regarding arbitration and mediation. However, given the theme of this part of the question, it would not advance the candidate's position much if the answer had much discussion on the measures taken by the courts and the Government to promote

the use of mediation domestically within Hong Kong. A not so small portion of candidates, surprisingly, seemed to have understood 'judicial assistance' as referring to the jurisdiction's arrangement domestically for legal aid. The correct range of arrangements of 'judicial assistance' for the purpose of this part of the question are those for mutual judicial assistance between Hong Kong and Mainland China and between Hong Kong and overseas jurisdictions, the jurisdiction of the HKSAR courts to assist overseas litigation and arbitration by granting interim reliefs and the jurisdiction of the HKSAR courts to assist foreign courts (and vice versa) through the use of letters of request. It was also surprising that some candidates still cited the Arbitration Ordinance as "(Cap.341)" and not "(Cap.609)".

#### Question 2

6. As between Q2 and Q3, a substantially larger portion of candidates attempted Q2. Those who attempted Q2, a question on the essentials of judicial independence and the challenges that the implementation of the National Security Law poses to judicial independence.
7. Q2(a): Many candidates referred only to Article 85 of the Basic Law. This is insufficient. Other provisions of the Basic Law, such as those concerning appointments and removals of judges and judicial immunity, are clearly relevant. A better answer must refer to the *Valente* criteria and discussed their application in Hong Kong. A not insignificant portion of candidates based their answers on the concept of 'separation of powers'; this is not in accordance with the question, which asks for discussion from the provisions of the Basic Law, legislation and common law practices. Another not insignificant portion of candidates discussed the power of the NPCSC to interpret the Basic Law; this part of the answer received no score, since this power does not affect the finality of adjudications. Most candidates missed the arrangements that are established in practice, including the common law rules for recusal and avoidance of conflict of interest, the safeguard of appeals and the Judiciary's mechanism for handling complaints against judges.
8. Q2(b): Candidates would receive a good score if they refer to and discuss the implications of those provisions of the National Security Law that establish the Chief Executive's domination over the enforcement of the National Security Law. Candidates would receive a even better score if they discuss correctly what the NPCSC interpretation of 30 December 2022 on Articles 14 and 47 of the National Security Law stipulates in favour of the authority of the Chief Executive.

#### Question 3

9. As indicated above, much fewer candidates attempted Q3. This is question on statutory interpretation.
10. Q3(a): This part of the question was set with the intention to guide candidates to show their understanding of the general principles of statutory interpretation established by section 19 of the Interpretation and General Clauses Ordinance (Cap.1) and by the judgments of the HKSAR courts. Although a majority of candidates correctly discussed

the purposive approach, some did so via constitutional cases such as *Ng Ka Ling v Director of Immigration* (1999) 2 HKCFAR 4 and *Director of Immigration v Chong Fung Yuen* (2001) 4 HKCFAR 211 and as a result, answers adopting this route did not receive the fuller scoring that answers relying on representative cases like *Medical Council of Hong Kong v David Chow Siu Shek* (2000) 3 HKCFAR 144 and *HKSAR v Cheung Kwun Yin* (2009) 12 HKCFAR 568.

11. Q3(b): Candidates who had correctly identified the relevant legislative provision of section 10B of the Interpretation and General Clauses Ordinance (Cap.1) and the two step approach it envisages would surely expect a score that would reflect their more than average competence. Candidates who added discussion of caselaw (such as *HKSAR v Chan Chun Kit* [2022] HKCFA 15) and/or the dimension of how to approach legislation first enacted in the English language would surely expect additional marks.

#### General observations

12. (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) Some candidates answered the question in a composite piece of writing not making any distinction between the portions of the question. It must be stressed that this is more than undesirable and to their disadvantage. 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.