

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

Question 1

Question 1(a) tests students' understanding of the concepts of prosecutorial discretion and independence. Prosecutors are often required to make decisions on a wide range of matters in/in the preparation of a criminal proceeding. These include, for instance, whether to bring the prosecution of a charge laid by the police, whether to stay proceedings (in both public and/or private prosecutions), whether to take over a private prosecution, whether to accept a guilty plea to a lesser charge, whether to appeal a conviction and/or a sentence and so on. These are often decisions that he/she must make based on his/her sense of professionalism and professional judgement, which inevitably involves a certain extent of discretion.

While most students are able to point out the tests which a prosecutor must apply in considering whether to prosecute - (i) whether the prosecution is in the public interest and (ii) whether there is a reasonable prospect of conviction - many are unable explain the role of a prosecutor in a criminal proceeding other than to make a decision to prosecute, and thus their answers appear incomplete. Some students further failed to appreciate the difference between the standards "reasonable prospect of conviction" and a "prima facie case".

On prosecutorial independence, while most students are able to mention the freedom of the Department of Justice from political interference, better performing students are expected to point to the Prosecution Code and describe the factors which a prosecutor should bear in mind in maintaining his/her impartiality, such as that his/her decision should not be affected by e.g. "any investigatory, political, media, community or individual interest or representation" and "the possible political effect on the government, any political party, any group or individual".

Students generally answered Question 1(b) satisfactorily and were able to associate prosecutorial independence with the rule of law.

Question 2

Question 2 was generally unsatisfactorily answered although it was a rather straightforward question. Many of such powers, e.g. the power to scrutinize and pass legislations proposed by the executive and the power to examine and approve budgets etc, are provided for under Article 73 of the Basic Law. Students may also mentioned the powers of the LegCO under the Legislative Council Powers and Privileges Ordinance (Cap 382) (LCPPO) to summon witnesses and require them to testify on oath. What the question further required is that on top of naming these powers, students should clearly articulate how these powers contribute to the monitoring of the Executive. However, instead of focusing on what needed to be addressed, many students discussed the concept of an "executive-led government", how the functional constituency undermined LegCo's

monitoring powers, as well as issues such as filibustering. Many of these scripts appeared to be off-topic. In fact, it could be observed that many answer scripts are almost identical in terms of structure and content, which gave rise to the suspicion that students were trying to memorize standard/model answers. This is a highly unsatisfactory approach as students are expected to understand study materials and not to simply recite them.

Question 3

Likewise, students' performance on Question 3 also showed a worrying sign that they may be reciting "standard" answers. Question 3 required students to demonstrate a basic understanding of the background context to the controversial 2016 Interpretation and its potential ramifications on Hong Kong's legal system. However, it did not require students to discuss all instances of NPCSC interpretations. Rather, it required students to analyse the 2016 Interpretation in some detail. At a minimum, students should be able to articulate the significance of the 2016 Interpretation in terms of its timing (that it potentially pre-empted a court judgment, thus undermining judicial independence) and that, coupled with the dating-back effects of NPCSC Interpretations in general, it gave rise to retroactivity leading to the disqualification of duly elected legislative councillors. The 2016 Interpretation was also a supplementary interpretation which, given how elaborative it was, arguably amounted to local law making which ought to be part of Hong Kong's autonomy. It would be insufficient to say that the 2016 Interpretation is just like any other.