

PCLL CONVERSION EXAMINATION JANUARY 2022

Title of Paper : Hong Kong Legal System
Date : 10 January 2022
Time : 9:30 a.m. – 11:00 a.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. **NO** reading time is designated for this paper.
6. This is an open book examination.
7. The paper consists of 3 pages, including three questions. Candidates are only required to answer **TWO** questions out of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2022

Hong Kong Legal System

Question 1 (50 marks)

The World Justice Project announced on 14 October 2021 that Hong Kong ranks 19 among 139 countries and regions under the Rule of Law Index 2021 that it assesses by reference to performance in these nine areas:

- (a) Constraint on Government Powers;
- (b) Absence of Corruption;
- (c) Open Government;
- (d) Fundamental Rights;
- (e) Order and Security;
- (f) Regulatory Enforcement;
- (g) Civil Justice;
- (h) Criminal Justice; and
- (i) Informal Justice.

Previously, Hong Kong ranked 16 among 126 countries and regions in 2019 and 16 among 128 countries and regions in 2020.

- (1) Discuss the relevance of a country or region's performance in each of the above *nine* areas to the overall performance of rule of law of that country or region. **(27 Marks)**
- (2) Discuss the potential strengths and potential weaknesses of the present Hong Kong Legal System that may affect future changes in Hong Kong's ranking. **(23 Marks)**

Question 2 (50 marks)

The doctrine of precedent or *stare decisis* is said to be "a fundamental feature of [Hong Kong's] legal system based on the common law" (per Li CJ in *A Solicitor (24/07) v Law Society of Hong Kong* (2008) 11 HKCFAR 117 (CFA) at 134).

- (1) Explain the justifications for the doctrine of binding precedent or *stare decisis*. **(25 Marks)**
- (2) To what extent would the courts in Hong Kong consider and apply judgments of another common law court? **(25 Marks)**

Question 3 (50 marks)

Recently, there are public discussions on the legal aid system administered by the Legal Aid Department, particularly on the right of choice of applicants for legal aid in civil and criminal cases to nominate lawyers for assignment to their cases and on the number of cases that lawyers (barristers and solicitors) can be assigned every year. With the above discussion in mind, answer the following questions:

- (1) What are the rationales for a publicly funded legal aid system? **(10 Marks)**
- (2) Are there any objections over the legal aid system being administered by a Government department, and if there are some objection(s), what are the *present* measures in place to address the matters underlying those objections? **(12 Marks)**
- (3)
 - (a) Why should applicants for legal aid in civil and criminal cases be able to nominate lawyers for assignment by the Legal Aid Department? **(8 Marks)**
 - (b) To what extent should the applicant's choice be respected by the Legal Aid Department? **(10 Marks)**
- (4) Should there be a limit on the number of cases that lawyers (barristers and solicitors) can be assigned with every year? **(10 Marks)**

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