

PCLL Conversion Examination
January 2022
Examiner's Comments
Hong Kong Legal System

1. The PCLL Conversion Examination on the subject of Hong Kong Legal System (“HKLS Examination”) was held on 10 January 2022.
2. The HKLS Examination was held as an open book examination. The examination paper has three questions, all carrying the same total marks of 50 marks. The candidates were required to answer two out of the three questions.
3. *Question Selection:* Almost all candidates chose to answer Question 2, which was on the very familiar and frequently examined topic of doctrine of precedent. More candidates chose to answer Question 3, which concerned the provision of legal aid, than Question 1, which concerned the factors for rating Rule of Law and the Rule of Law situation of Hong Kong.
4. *Question 1:* This question has two parts. The *first part* lists the nine matters that the World Justice Project used to assess or rate the Rule of Law situation of countries and regions and asks the candidates how these matters relate to the Rule of Law, thus testing their understanding of the Rule of Law as a collection of inter-related constitutional and moral principles. Candidates provided a range of answers. The stronger answers sought to discuss the nine matters by integrating them with the discussion of the Rule of Law by Lord Bingham and/or A. V. Dicey. Competent answers sought to draw parallels with the institutions and arrangements in Hong Kong to illustrate the relevance of the matters to Rule of Law assessment, and some of them validly discussed civil and criminal justice together. Some answers had not discussed all the nine factors and as a result could not be scored fully. The *second part* asks the candidates to identify and discuss the issues pertaining to the Rule of Law in Hong Kong that can be considered as strengths and weaknesses. Candidates usually discussed two issues, and the stronger answers provided one theme or topic and discussed the several sub-issues under it.
5. *Question 2:* This question has two parts. The *first part* asks for explanations of the justifications of the doctrine of precedent. The *second part* asks of the extent to which the HKSAR courts can consider and apply judgments of a court of another common law jurisdiction. Many answers included a particularly worded summary of the *A Solicitor v Law Society of Hong Kong (24/07)* case and/or particularly worded text that discussed the balance between certainty/consistency and flexibility. A substantial proportion of candidates providing such answers misallocated under the *first part* the content that should be written under the *second part*, namely the non-binding and persuasive nature of a judgment of a court of a common law jurisdiction outside Hong Kong. And such answers did not address the key matters sought to be examined in the two parts of the question. Relatively few answers of the *second part* sought to discuss the factors affecting the HKSAR courts’ consideration of how persuasive a judgment of a court of a common law jurisdiction outside Hong Kong would be

to the HKSAR courts, such as the question of adjudication before the Hong Kong court and the similarity of the issue decided in the foreign judgment to that question.

6. *Question 3:* This question concerns the provision of legal aid and asks the candidates a number of structured questions arising from the HKSAR Government's 2021 proposals to reform legal aid, particularly the limitation of the choice of lawyer by the legally aided person and the limitation of the number of cases counsel and solicitors may be assigned with (see Legislative Council Administration of Justice and Legal Services panel paper: <https://www.legco.gov.hk/yr20-21/english/panels/ajls/papers/ajls20211026cb4-1677-1-e.pdf>). As to (1), on the rationales for legal aid, many answers wrote down the provisions of the Basic Law of the HKSAR and the Hong Kong Bill of Rights related to legal representation without elaborating the principles, including the particularly relevant principle that no person should be denied access to justice because of lack of means. As to (2), on the objection to legal aid being administered by a government department, many answers referred to the perception based objection of the Legal Aid Department administering legal aid, the Legal Aid Services Council, and the proposal for an independent legal aid authority. Relatively few answers stated existing mechanisms of alleviation beyond the Legal Aid Services Council's functions, such as appeals to the Registrar of the High Court against refusal of civil legal aid. As to (3), on the human right of a legally aided person to choose her own lawyers, many answers were only able to refer to the human rights guarantees and then expressed agreement with the upholding of the human right, without showing any consideration to the normative and practical considerations, such as that the human right is not absolute, that the Director of Legal Aid has the professional knowledge and information to make assignment of lawyers, and that the applicant's choice could be ill-informed, that would have informed the discussion of (3)(b). As to (4), on the limitation of the number of assignments to lawyers, the better answers did consider the practical issues for having a limitation of assignments, such as the experience and skill of the lawyer concerned, the manpower and resource available to the lawyer concerned and the need to develop a pool of competent lawyers (including younger lawyers) in civil and criminal litigation, though there were answers that simply expressed the view that there should not be any limitation of assignments. Also, there were some answers that referred to, out of context, the Duty Lawyer Service.