

**PCLL Conversion Examination**  
**January 2021**  
**Examiner's Comments**  
**Hong Kong Legal System**

The paper consisted of three questions; of which candidates were required to answer two.

Overall, the standard of answers was poor. The reasons therefor varied: poor English was sometimes a factor as was time management but the major deficiencies were a failure to answer the question set, lack of subject knowledge and reliance on obsolete material.

**Question 1**

**Question one** posited the diminution of an **already limited right to a jury trial in Hong Kong** as a result of the new “National Security Law” (NSL). Those who failed were generally either unaware of the substance of this important piece of PRC legislation **or** failed to comment on the already highly circumscribed “right” to a jury trial in Hong Kong. Two fundamental issues which had to be addressed were the limitations of current jury availability (*Lily Chiang*) and the potential impact of **Article 46, NSL**. Candidates needed to show awareness of the fact that, while **Article 86, Basic Law** guarantees the continuance of the jury system as “previously practised”, it does **not** guarantee the right to a jury trial in any particular case.

Many scripts detailed limitations on the current system in terms of “quality” of jury decisions, supposed “unrepresentativeness” of the Hong Kong jury, and the narrowness of the existing jury “pool”. None of this was relevant to the question.

**Question 2**

**Question 2** was, essentially, a question on judicial precedent and the crucial impact on same of the case of *A Solicitor v Law Society of Hong Kong* (2008). While the judgment of Bokhary PJ in the case was of significant in terms of “standard of proof”, the question called for a discussion of the **judicial precedent** effect of the case so that the crucial judgment was that of Li CJ. Candidates needed to consider, in particular, the precedent status of Privy Council judgments (pre-1997 from Hong Kong and otherwise), pre and post 1997 judgments of the UK House of Lords, and the current “vertical” and “horizontal” stare decisis positions of Hong Kong’s Court of Appeal and Court of Final Appeal.

The question was attempted by fewer candidates, but generally handled quite well. The weaker answers had major omissions: such as the amended “horizontal” precedent position of the Court of Appeal and Li CJ’s explanation of the CFA’s current “horizontal” precedent position. In the worst case, candidates seemed unaware of the difference between Hong Kong’s Court of Appeal and Court of Final Appeal!

### Question 3

**Question 3**, which was rather more open-ended, was the most popular, and reasonably well answered by many candidates. There was a great deal of possible information to provide including, as a starting point, those “continuing” rules stated in **Articles 8 and 18, Basic Law**. The question required discussion of how, if at all, PRC law has replaced the common law as the major source of Hong Kong law.

Clearly there needed to be recognition of the **Basic Law** itself as a piece of PRC legislation (a number of candidates appeared to regard it as a Hong Kong law); as well as the significance of National people’s Congress Standing Committee “interpretations” (including the far more “flexible” approach to “interpretation” of the Standing Committee); PRC laws listed in Annex III (including the NSL); and the apparent “Act of State” justification for the “West Kowloon co-location” anomaly.