Syllabus for Hong Kong Constitutional Law

1. The Acquisition of British Sovereignty

The Unequal treaties - the Basis of British Jurisdiction in Hong Kong - The Assumption and exercise of British Authority - The Constitution and the System of Government - Political reform in the Fifties - Development of the Administrative System - Development of Representative Government;

2. The Resumption of Sovereignty

Sovereignty and Self-Determination - Sino-British Negotiation and the Joint Declaration - the Drafting of the Basic Law - Residual Powers - Scope of Application of Chinese Constitution - The Structure of the Basic Law - Transitional Issues - Patten’s Political Reform in the Nineties - Breakdown of the Through-train model - Provisional Legislative Council and its Legality;

3. The Framework of the Basic Law

Models of Autonomy and One Country, Two Systems - Separation of powers in the Basic Law - The nature of the Basic Law - General Principles - Relationship between Central Government and the HKSAR;

4. The Political and Administrative System

The Political Structure - Basic principles - Forms of Representation - NPC - Centralized and Consultative Government - Separation of powers or Executive-led Government - Legislative Council – Composition - Powers and Functions of the LegCo - Restriction on law making powers - Law making process - Supervision of executive and parliamentary enquiry - Public Finance - Impeachment of the Chief Executive - Selection of the Chief Executive - The Executive and the Chief Executive in Council - Contradictions in the political system - Neutrality of the civil service and the Ministerial System - Localization and principal officials;

5. Constitutional Jurisdiction of the Courts of the HKSAR

Parliamentary sovereignty and its application to the HKSAR - Act of State - Facts of State - Judicial review of legislation - resolutions of the NPCSC;

6. Interpretation and Amendment of the Basic Law

The importance of interpretation and the mode of interpretation - The Scheme for interpretation under Art 158 - Judicial referral, classification test and necessity test - The interpretation powers of the NPCSC and the HKSAR Courts - Problems arising under Art 158 - Legislative interpretation versus judicial interpretation - Judgment previously rendered shall not be affected - Role of the Basic Law Committee - Principles of and approach to interpretation - The scheme of Amendments to the Basic Law;
7. Rights and Freedoms


8. International Aspects of the HKSAR

Chinese view of international law - External Affairs powers of the HKSAR - Role and problems of HKSAR in international legal regime - Succession of rights and obligations in international treaties applicable to Hong Kong before 1997 - capacity to participate in international treaties, conferences and organizations - Conflicts of law and recognition of judgments of Taiwan courts;

9. The Constitutional System of the People’s Republic of China

Theory of socialist constitution - A brief history of Chinese Constitutional System - The PRC Constitution - Central Authorities of the PRC (NPC, NPCSC, State Council, Central Military Commission) - The role and organization of the Communist Party - Special Administrative Regions under Art 31 - Rights and legality - Sources of Law (Legislative Interpretation and Executive Interpretation) - The Judiciary, the Public Security Bureau and the Procuratorate - Review of the Judiciary - A Developing Constitution.
Reading List for Hong Kong Constitutional Law


*Johannes Chan, "The Jurisdiction and Legality of the Provisional Legislative Council" (1999) 27 HKLJ 374

*Johannes Chan, “Some Thoughts on Constitutional Reform in Hong Kong,” 34 (2004) HKLJ 1

*Johannes Chan, “Civil Liberties, Rule of Law and Human Rights: The Hong Kong Special Administrative Region in its First Four Years in Lau Siu-kai (ed) The First Tung Chee-hwa Administration: The First Five Years of the HKSAR [Hong Kong: Chinese University Press, 2002]


*Albert Chen, "The Concept of Justiciability and the Jurisdiction of the Hong Kong Courts" (1997) 27 HKLJ 387


*Chen, Fu & Ghai (ed) Hong Kong's Constitutional Debate: Conflict over Interpretation (2000)

*Yash Ghai, Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law (2nd ed. 1999)


*S. de Smith, Constitutional and Administrative Law (7th ed. 1994), p3-13,

* Nwabueze, Constitutionalism in the Emergent States (1973), Chapter 1

*Benny Tai Yiu-ting, “The Development of Constitutionalism in Hong Kong” in Raymond Wacks, The New Legal Order in Hong Kong (1999)
*Benny Y. T. Tai, “Chapter One of Hong Kong's New Constitution: Constitutional Positioning and Repositioning” in Ming Chan and Alvin Y. So (ed.) Crisis and Transformation in China's Hong Kong (M.E. Sharpe, 2002)


Sources

The Basic Law of the Hong Kong Special Administrative Region (1990)
Sino-British Joint Declaration on the Future of Hong Kong (1984)