

PCLL Conversion Examination

5th January 2010

Examiner's Comments

Hong Kong Constitutional Law

1. For Question 1, students are expected to provide an understanding of “One Country Two Systems” and autonomy and to analyze how involved and how active the role of the Central Government should be in the governance of internal affairs in the HKSAR on the basis of these understandings. Students are expected to refer and analyze incidents happened in Hong Kong since 2003 especially the development of the political system of the HKSAR to support his/her arguments.
2. The overall performance of students answering Question 1 is satisfactory. Most students were able to demonstrate adequate understanding on One Country Two Systems and the high degree of autonomy enjoyed by Hong Kong.
3. For Question 2, students are expected to refer to Article 45, Article 68, Annex I, Annex II, Interpretation of the SCNPC in 2004, decisions of the SCNPC in 2005 and 2007, Article 25 of the ICCPR and the General Comment 25 by the Human Rights Committee under ICCRR. Students are expected to explain the basic features of functional constituencies and the requirements of universality and equality. Students may suggest some alternative models of functional constituency elections like expanding the electorate base of functional constituency, setting up new functional constituencies including all voters, or allowing functional constituencies to nominate candidates to be elected by all voters. One important issue that students should discuss is whether the equality principle applies only to the number of votes each citizen can have or also to the weight of each vote.
4. The overall performance of students answering Question 2 is not satisfactory. Many students had only considered the political feasibility of modifying the functional constituencies but had not approached the question from the perspective of constitutional design which should be the focus of the question.
5. For Question 3, students are required to provide a summary of the fact of the case concerning the compatibility of s. 7 of the National Flag Ordinance and s. 7 of Regional Flag Ordinance with Art. 19 of the ICCPR. Students are expected to

critically analyze the following issues: (a) the constitutional status of the ICCPR and its relationship with Article 39 of the Basic Law and the HKBORO; (b) the form of limitation on freedom of expression by the legal provisions; (c) *ordre public* as the legitimate aim in limiting freedom of expression and the application of this concept to the protection of the Flags; (d) whether the limitation imposed on freedom of expression was necessary and proportionate.

6. The overall performance of students answering Question 3 is satisfactory. Most students can demonstrate an adequate understanding of the case and provide an adequate analysis on the significance of the case.
7. For Question 4, students are required to explain the purposive approach of interpretation as elaborated by the Court of Final Appeal in *Na Ka Ling*. In applying the approach to the question, students should analyze whether the “executive-led form of government”, “the Government of the HKSAR must be accountable to the Legislative Council”, “the Legislative Council shall be the legislature of the HKSAR,” or “separation of powers” are the primary purposes of the Basic Law and how far these principles may determine whether Rule 51(3) of the Rules of Procedures of the Legislative Council of the HKSAR contravenes Article 74 of the Basic Law.
8. Most students performed badly in this question. Most students cannot identify the relevant purposes of the Basic Law including “executive-led form of government” and “separation of powers.” Some students failed even to provide an explanation of the purposive approach.