

PCLL Conversion Examinations

June 2010

Examiner's Comments

Hong Kong Constitutional Law

1. For Question 1, students are expected to (a) explain the meaning of “de facto referendum” including the resignation of 5 legislative councilors and their claim that the by-election is a form of referendum for Hong Kong people to decide whether they support the continuation of functional constituencies; (b) analyze whether there is such a public law principle that if there is no authorization to do something then it is forbidden; (c) analyze the nature of the Basic Law on whether it is a public law; (d) analyze the purposes of the Basic Law by referring to provisions of the Basic Law on whether “de facto referendum” is authorized by the Basic Law; (e) analyze whether the Basic Law prohibits a legislative councilor from resigning and taking part in the by-election (Article 79); and (f) analyze whether the Basic Law prohibits a candidate in a by-election to claim that the by-election is a referendum.
2. The overall performance of students answering Question 1 was not satisfactory. Many students failed to give sufficient attention to the “de facto” nature of the referendum in determining its legality.
3. For Question 2, students are expected to: (a) analyze whether the Basic Law enshrines a constitutional principle of separation of powers; (b) analyze whether the principle of separation of powers requires the President of the Legislative Council not to vote in the passage of any motion, bill or amendment in the Legislative Council; and (c) analyze whether the President not voting in the Legislative Council can be derived from other sources like constitutional convention.
4. The overall performance of students answering Question 2 was not satisfactory. Many students just provided a general analysis on the political system of the HKSAR or the principle of separation of powers as enshrined in the Basic Law without addressing the question whether the voting arrangement of the President of the LegCo could be derived from the principle of separation of powers or other constitutional principles and sources.

5. For Question 3, students are expected to (a) explain the purposive approach of interpretation as elaborated by the Court of Final Appeal in *Na Ka Ling*; (b) apply the approach to interpret “universal suffrage” explaining why certain specific requirements can be derived from such interpretation; (c) refer to the literal context of the Basic Law in ascertaining the meaning of universal suffrage, in particular Article 25 of the International Covenant on Civil and Political Rights; (d) consider specific requirements like no. of votes enjoyed by every elector, weight of each vote enjoyed by every elector and the conditions on the eligibility of candidates; (e) explain the existing form of functional constituencies; and (f) explain whether existing form of functional constituencies can satisfy those requirements.
6. The overall performance of students answering Question 3 was not satisfactory. Many students failed to give sufficient account to the specific requirements on the form of election prescribed by universal suffrage on the basis of the purposive approach of interpretation. Many answers wrongly put the on the pace of democratic development of the political system of the HKSAR. Also, many students failed to mention Article 25 of the International Covenant on Civil and Political Rights as the literal context in ascertaining the meaning of universal suffrage in the Basic Law.
7. For Question 4, students are expected to: (a) interpret the provisions of the Basic Law to determine whether the President of Legislative Council has the authority to rule on whether a bill is related with “public expenditure or political structure or the operation of the Government” or “Government policies”; (b) analyze how the principle of “executive-led form of government” can be applied to determine whether the President has the authority; (c) whether there is any contradiction between Rule 51(3) and 51(4) of the *Rules of Procedures of the Legislative Council of the HKSAR* and Article 74 of the Basic Law; (d) explain the nature and the possible scope of the “Citizen Fitness Bill”; (e) interpret “public expenditure or political structure or the operation of the Government” or “Government policies” mentioned in Article 74; and (f) analyze whether “Citizen Fitness Bill” is within the meaning of “public expenditure or political structure or the operation of the Government” or “Government policies”.
8. The overall performance of students answering Question 4 was not satisfactory. Many students just gave an analysis on the relationship between the executive authorities and the legislature in the HKSAR in general without addressing the

specific issues raised in the question. Also, some students just addressed the issues concerning the power of the President of the LegCo and missed or gave insufficient attention to the issues concerning the constitutionality of the “Citizen Fitness Bill”.