

PCLL CONVERSION EXAMINATION, JANUARY 2010

Title of Paper : Hong Kong Constitutional Law
Date : 5 January 2010
Time : 2:30 p.m. – 2:45 p.m. (Reading Time)
2:45 p.m. – 4:15 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is an one and a half-hours examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of 3 pages, including four questions. Candidates are only required to answer **TWO** questions out of four. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2010

Hong Kong Constitutional Law

Question One (50 marks)

“During the first five years following Hong Kong’s reunification with China, the mainland’s general policy towards Hong Kong was rather laissez faire. Even during the early days of economic crisis in 1997-98, the message from the central continued to be that ‘Hong Kong People can run Hong Kong successfully’.

...The turning point came in July 2003. ...500,000 people launched demonstrations due to several sources of dissatisfaction—security legislation proposed under Article 23 of the Basic Law, a failing economy, the handling of the SARS epidemic and perceived shortcomings of the Tung Chee Hwa administration.

The protest caused the government to put aside its pending National Security Ordinance two months later, an event regarded by all sides as a watershed for Hong Kong’s political environment.

...Since then, a new paradigm in the Beijing-Hong Kong relationship has taken shape.

...the ‘new’ Hong Kong policy of Beijing ...is a reaction to changes in Hong Kong’s own political environment since 2003. It is different from the old ‘well water does not interfere with river water’ policy, in the sense that it emphasizes more central government engagement and involvement in Hong Kong’s political development. While the former policy gave more weight to the ‘two systems’, the more recent policy gives more weight to ‘one country.’

...if the political environment in Hong Kong changes so that Beijing is no longer the target of local politics, Beijing may also withdraw from the arena. But until then, the natural and necessary choice for the central government is to support the executive, whether or not it is popular.”

Cheng Jie, “The Story of a New Policy,” (2009) 15 *Hong Kong Journal*

The author suggested that there was a change in mainland’s policy towards Hong Kong: from laissez faire to direct engagement and involvement. Discuss the impact of this ‘new policy’ of direct engagement and involvement by the central government on the autonomy of Hong Kong. Give reasons to support your answer.

Question Two (50 marks)

The Chief Secretary for Administration, Mr. Henry Tang, in introducing the *Consultation Document on the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012* to the Legislative Council, said:

“As for the universal suffrage model for the LegCo, we consider that the existing [functional constituency] elections have yet to comply with the principles of universality and equality. The model for implementing universal suffrage in 2020 should comply with these two principles.”

Explain whether it is possible to modify functional constituency elections so as to make them compatible with the principles of universality and equality. Support your view in light of the provisions of the Basic Law, the relevant decisions of the Standing Committee of the National People’s Congress and the International Covenant on Civil and Political Rights (ICCPR).

Question Three (50 marks)

HKSAR v. Ng Kung-siu and another [2000] 1 HKC 117 is one of the important decisions of the Court of Final Appeal of the HKSAR concerning the Basic Law.

Give your views on whether the case was rightly decided, and review the constitutional significance and implication of this case.

Question Four (50 marks)

Article 74 of the Basic Law provides that: *“Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.”*

Rule 51(3) of the Rules of Procedures of the Legislative Council of the HKSAR provides that it is up to the President of the Legislative Council to decide whether a bill presented by a member of the Legislative Council relates to *“public expenditure or political structure or the operation of the Government”*.

Apply the purposive approach of interpretation to argue whether Rule 51(3) of the Rules of Procedures of the Legislative Council of the HKSAR contravenes Article 74 of the Basic Law.

~ End of Examination Paper ~