

PCLL CONVERSION EXAMINATION, JANUARY 2011

Title of Paper : Hong Kong Constitutional Law
Date : 4 January 2011
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 a 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 2011

Hong Kong Constitutional Law

Question One (50 marks)

“The Basic Law is a national law and is the constitution of the region.”
Ng Ka-ling v Director of Immigration [1999] 1 HKC 323

Comment on the above statement made by CFA.

Question Two (50 marks)

The Basic Law regulates the relationship between the HKSAR and the central authorities and distributes powers to be enjoyed respectively.

You are now invited to give a lecture on the relationship and the division of powers between the HKSAR and the central authorities to a group of mainland students who are currently visiting the judicial institutions of Hong Kong, in which you are specially required to identify the autonomous powers exercised by the HKSAR under the principle of “high degree of autonomy”.

Please write your speech with reference to any constitutional theory and relevant provisions of the Basic Law.

Question Three (50 marks)

In *HKSAR v. Ma Wai Kwan David* decided on 29 July 1997, Chan J, the then Chief Justice of the High Court, stated the following under “Jurisdiction of the Courts”:

“In the context of the present case, I would accept that the HKSAR courts cannot challenge the validity of the NPC decisions or Resolutions or the reasons behind them which set up the Preparatory Committee. Such decisions and resolutions are the acts of the Sovereign and their validity is not open to challenge by the regional courts.”

[1997] 2 HKC 335

In *Ng Ka-ling v. Director of Immigration*, the Court of Final Appeal (CFA) unanimously decided, under “Constitutional Jurisdiction of the Courts” that:

“What has been controversial is the jurisdiction of the courts of the Region to examine whether any legislative acts of the NPC or its Standing Committee (which we shall refer to simply as “acts”) are consistent with the Basic Law and to declare them to be invalid if found to be inconsistent. In our view, the courts of the Region do have this jurisdiction and indeed the duty to declare invalidity if inconsistency is found.”

“In our view, this conclusion of the Court of Appeal as to the jurisdiction of the Region’s courts is wrong.”
[1999] 1 HKC 323, 324

In the light of the relevant provisions of the Basic Law and the theory of court jurisdiction:

- (a) Discuss the scope of the HKSAR courts’ constitutional jurisdiction as expounded in *Ma Wai Kwan David and Ng Ka-ling*; (20 marks)**
- (b) Critically assess the courts’ positions. (30 marks)**

Question Four (50 marks)

During the recent celebration of the National Day of the PRC, Henry Leung and Kathy Ng from the pan-democracy camp clashed with the demonstrators from the pro-Beijing camp. The angry Henry and Kathy defaced the portrait of Wen Jiabao, Premier of the State Council, and then burned the National Flag. They are now charged by the police for disturbing public order.

Shortly after the event, the State Council instructed the Chief Executive to consider enacting a legislation to implement Art. 23 of the Basic Law on the ground that there is an actual need to enact the law to prevent people from subverting the central government in Hong Kong.

- (a) As the lawyer of Henry and Kathy, how will you defend their rights with reference to the relevant legislation and cases; (20 marks)**
- (b) The Secretary for Justice invited you to advise him on the State Council’s instruction to enact a legislation to implement Art 23. Please prepare the memo. (30 marks)**

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