

PCLL CONVERSION EXAMINATION JUNE 2010

Title of Paper : Hong Kong Constitutional Law
Date : 28 June 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 a one and a half-hour 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**

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Hong Kong Constitutional Law

Question One (50 marks)

Five councilors from pan-democrats camp resigned from the Legislative Council. This has led to a by-election, which they hope would be seen as a “de facto referendum” on full democracy. On the basis of the public law principle that if there is no authorization to do something, then it is forbidden, Li Fei, vice chairman of the Legislative Affairs Commission of the National People’s Congress, alleged that such a move is illegal as the Basic Law makes no mention of referendum.

Give your views on the legality of the “de facto referendum” and the constitutional implication if the “de facto referendum” is illegal. You are required to consider the issues on the basis of the nature, the purpose and the text of the Basic Law.

Question Two (50 marks)

“On the basis of the principle of separation of powers enshrined in the Basic Law, the President of the Legislative Council should not vote in the passage of any motion, bill or amendment in the Legislative Council.”

Explain, giving reasons, whether you agree or disagree with the views expressed above.

Question Three (50 marks)

Article 68 of the Basic Law provides that:

“The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by *universal suffrage*.”

Apply the purposive approach of interpretation to determine the specific requirements of “universal suffrage” provided in Article 68 of the Basic Law and analyze whether the existing form of functional constituencies is compatible with these requirements.

Question Four (50 marks)

Leung Tai Hung is a member of the Legislative Council of the HKSAR. He drafted a bill on fitness exercises. The title of the Bill is “Citizen Fitness Bill.” The long title of the Bill provides that: “An Ordinance to provide for promoting citizens to carry out fitness exercises.” A major provision of the Bill is to set the 8th day of August every year as the City Fitness Day.

Leung gave notice to the Legislative Council in accordance with Rule 51(1) of the *Rules of Procedures of the Legislative Council of the HKSAR* of his intention to present a bill. According to Rule 51(3) and 51(4) of the *Rules of Procedures of the Legislative Council of the HKSAR*, the President of the Legislative Council ruled that the Bill does not relate to “public expenditure or political structure or the operation of the Government” and “Government policies”. The bill was then published in the Gazette.

The Government of the HKSAR questioned the authority of the President of the Legislative Council to rule on whether a bill is related with “public expenditure or political structure or the operation of the Government” or “Government policies”. The Government of the HKSAR asserted that this power is vested in the Chief Executive of the HKSAR in accordance with Article 74 of the Basic Law and the constitutional principle of “Executive-led form of government”. The Government of the HKSAR also disagreed with the decision of the President of the Legislative Council that the Bill did not relate to “public expenditure or political structure or the operation of the Government” and “Government policies”.

The Government of the HKSAR applied for judicial review to challenge the authority and decision of the President of the Legislative Council.

You are the judge of the Court of First Instance hearing this case. Write the judgment.

~ End of Examination Paper ~